

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

5-2 ✓
In the

892

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA, CIRCUIT

No. 22702

LEON A. TASHOF,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION TO REVIEW AN ORDER OF THE FEDERAL TRADE COMMISSION

APPENDIX

Volume 1 Pages 1 to 348

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United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK

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APPENDIX

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION, SS:

In the matter of
NEW YORK JEWELRY COMPANY

DOCKET 8714
CCA 22,702

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
LEON A. TASHOF, individually
trading as
NEW YORK JEWELRY COMPANY.

DOCKET NO. 8714

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Leon A. Tashof, trading as New York Jewelry Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent Leon A. Tashof is the sole proprietor of a retail store located at 719 Seventh Street, N.W. in the City of Washington, District of Columbia. Respondent does business under the name New York Jewelry Company.

Respondent formulates, directs and controls the acts and practices of the New York Jewelry Company as hereinafter set forth.

PARAGRAPH TWO: Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of various kinds of goods, including, but not limited to, watches, radios, rings, furniture, cookware, eyeglasses, television sets and other electrical appliances to the public. Respondent's customers are principally of the low income group and the preponderance of respondent's sales to such customers are on credit.

PARAGRAPH THREE: In the course and conduct of his business, respondent now causes, and for some time last past has caused said merchandise, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PARAGRAPH FOUR: In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his merchandise by the consuming public, the respondent has made numerous statements in advertisements inserted in newspapers and by other means with respect to the sale of eyeglasses, and other merchandise as aforesaid.

Typical and illustrative of the aforesaid statements are the following:

"DISCOUNT
EYE GLASSES
MADE WHILE YOU WAIT
Price includes
lenses, frames from \$7.50
and case complete"

* * *

PARAGRAPH FIVE: By and through the use of the aforesaid advertisement, and others of similar import not specifically set forth herein, the respondent has represented directly or by implication that the offer of eyeglasses for \$7.50 is a bona fide offer and that respondent is selling eyeglasses at discount prices substantially below the prices charged by other establishments for similar corrective eyeglasses.

PARAGRAPH SIX: In truth and in fact respondent's offer of eyeglasses at a price of \$7.50 is not a bona fide offer. It is made for the purpose of inducing prospective purchasers of eyeglasses to enter respondent's place of business whereupon the quality of the \$7.50 eyeglasses is disparaged and their purchase otherwise discouraged and an attempt is made, frequently with success, to sell eyeglasses costing substantially more. Furthermore, respondent's prices for eyeglasses are not discount prices nor are they substantially below the prices charged by other establishments for similar corrective eyeglasses.

Therefore, the representations set forth in Paragraphs Four and Five, hereof were and are false misleading and deceptive.

PARAGRAPH SEVEN: In the further course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his said merchandise, the respondent has engaged in the following acts and practices:

1. He detains passers-by on the street around and about his place of business and after determining that they have a job where a garnishment can be obtained against their wages he presents them with a "Free Gift" card (example attached hereto as Exhibit "A" and made a part hereof), and invites them to enter his store to receive a "free gift" or a "free" eye examination without the need to buy anything and without other obligation. When the recipients of such "free gift" cards enter respondent's store they are given an inexpensive item such as a small pocket comb or a ball point pen. While in respondent's store they are informed that their credit is good and that therefore they can purchase any item in the store including eye glasses on easy credit terms with no money down. At the urging of respondent or his employees many persons who have entered respondent's store to receive "free" eye examinations or "free" gifts have purchased eye glasses or other merchandise on the so-called "easy credit terms".
2. Respondent affixes tickets to his merchandise bearing the retail prices thereof, thereby representing, directly or by implication, that such prices are competitive and reflect the reasonable or fair market value of such merchandise. Without determining his customers' financial ability to pay or their credit rating respondent sells merchandise to them on "easy credit terms" at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other

retail establishments in the same trade area whether sold on credit or for cash. (For example: transistor radios costing respondent \$3.45 bear a retail price of, and are sold by respondent for \$59.50). In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract.

PARAGRAPH EIGHT: By and through the use of the afore-said acts and practices, and others similar thereto not specifically set forth herein, the respondent takes an unfair advantage of the uninformed and low income members of the consuming public:

1. By luring them into his store to receive a "free gift" or a "free" eye examination where they are urged, encouraged and induced to purchase merchandise on credit terms that, contrary to respondent's representations, are not easy because of the fact that the prices charged by respondent for such merchandise are unconscionably high and greatly in excess of the reasonable or fair market value of such merchandise. Respondent extends credit to such customers without determining their credit rating or their financial ability to meet their payments. As a result many of such customers are unable to make their credit payments whereupon respondent seeks, and often with success, to obtain garnishments against their wages.
2. By including in the prices affixed to and charged for his merchandise undisclosed charges for making purchases on credit, therefore such prices are not competitive nor do they reflect the reasonable or fair market value of such merchandise because they are unconscionably high and

greatly in excess of the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash.

3. By failing to fully and adequately inform his credit customers of all the credit charges or financing fees imposed upon them by listing them separately, and by failing in many instances to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract.

Therefore, the acts and practices of respondent as set forth in Paragraph Seven hereof are contrary to public policy and are false, misleading, deceptive or unfair.

PARAGRAPH NINE: The use by respondent of the aforesaid false, misleading and deceptive representations and unfair and deceptive practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of respondent's merchandise by reason of said erroneous and mistaken belief or lack of knowledge as the result of respondent's failure to disclose pertinent information to said members of the purchasing public, and because of respondent's unfair and deceptive acts and practices.

PARAGRAPH TEN: The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of that portion of the public respondent normally deals with and constituted, and now constitute, unfair or deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 29th day of September, A.D. 1966, issues its complaint against said respondent.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the 14th day of November A.D. 1966 at 10 o'clock is hereby fixed as the time and Federal Trade Commission offices, 1101 Building 11th & Pennsylvania Avenue, N. W., Washington, D. C. as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the hearing examiner, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint:

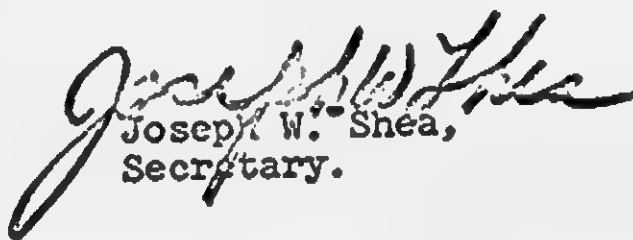
IT IS ORDERED that respondent, Leon A. Tashof, an individual, trading as New York Jewelry Company, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of any merchandise, products, goods or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any merchandise is offered for sale when such offer is not a bona fide offer to sell such merchandise at the stated price.
2. Disparaging, or otherwise discouraging the purchase of any merchandise that is advertised.
3. Representing, directly or by implication, that any article of merchandise is offered for sale or sold at a discount price or at a price below the price charged by other retail establishments for the same or substantially similar merchandise; provided, however, that it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that any such price is substantially lower than the prices charged for the same or similar merchandise by a reasonable number of principal retail establishments in the same trade area.
4. Including in any stated retail price any costs or charges for credit or credit risk involved.
5. Failing to disclose in a clear and conspicuous manner in all conditional sales contracts or other credit instruments at the time any such contract or instrument is executed by a purchaser:

- (a) the retail price of the merchandise purchased, exclusive of all credit or financing fees or charges;
 - (b) all credit or financing fees or charges, listed separately;
 - (c) the total amount to be paid including the retail price and all credit or financing fees or charges;
 - (d) the period of time over which payments are to be made, the amount of each payment and the total number of payments to be made.
6. Misrepresenting in any manner the reasonable or fair market value of any merchandise.
7. Engaging in any other act or practice, in connection with the sale of merchandise or services on credit to the uninformed or low income members of the consuming public, that exploits or is unfair or deceptive or unconscionable because of the economic or financial status of, or lack of established credit by, such members of the consuming public.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this 29th day of September, A. D. 1966.

By the Commission.


Joseph W. Shea,
Secretary.

Because We Appreciate Your Business

MR. TASH, THE MGR., SAYS:
I'LL GIVE CREDIT TO EVERYBODY,
EVEN IF YOU NEVER HAD CREDIT.
LOST YOUR CREDIT, OR OTHERS
HAVE TURNED YOU DOWN.

=====

CREDIT CARD

=====

NEW YORK JEWELRY COMPANY
719-7TH STREET, N.W. — WASHINGTON, D. C.

=====

Certifies that BEARER
is an AAA-1 Preferred Customer.
Instant Credit
No Money Down.
Make Your Own Terms.

=====

THIS CARD CERTIFIES THAT YOU HAVE A PREFERRED
CREDIT RATING AND ATTESTS TO YOUR CHARACTER
EXCELLENCE.

FREE GIFT
FOR YOU!

No Obligation

Don't Buy a Thing

Don't Spend a Minute, Just Present
This Card and Get Your

FREE GIFT

YOUR CREDIT IS GOOD !

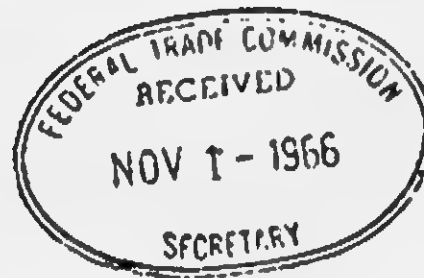
No Money Down

Pay As Little As 50c Per Week

NEW YORK JEWELRY COMPANY

719-7TH STREET, N. W.
WASHINGTON, D. C.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of
LEON A. TASHOF, individually
trading as
NEW YORK JEWELRY COMPANY.

DOCKET NO. 8714

ANSWER

Comes now, Leon A. Tashof, individually trading as New York Jewelry Company, through his attorneys, Crossberg, Yochelson, Brill & Fox, and for answer to the Complaint filed herein states as follows:

PARAGRAPH ONE: Respondent admits he is the sole proprietor of a retail store located at 719 - 7th Street, Northwest, in the City of Washington, District of Columbia, and that he does business under the name of New York Jewelry Company. All other allegations of Paragraph One of the Complaint are denied.

PARAGRAPH TWO: Respondent admits that he is engaged in the sale of retail goods to the public, and alleges that his customers are from all income groups. Respondent admits that a preponderance of his sales are on credit.

PARAGRAPH THREE: Respondent admits that he is engaged in sales to purchasers within the District of Columbia, but denies that he causes all of said merchandise to be "transported" from his place of business. On the contrary, he alleges that with certain minor exceptions, the merchandise is delivered to customers at his place of business. Respondent is without sufficient knowledge to form an opinion as to whether he is engaged in commerce as defined in the Federal Trade Commission Act and accordingly denies same.

PARAGRAPH FOUR: Respondent admits that in the conduct of his business he has advertised in local newspapers and by other means with respect to the sale of merchandise. Respondent denies that the illustration set forth in Paragraph Four of the Complaint is either typical or illustrative of his advertisements. In addition, respondent denies that said illustration set forth in Paragraph Four sets forth a complete or accurate representation of the actual advertisement. Respondent further alleges that he abandoned the type of advertisement referred to in said Paragraph more than eighteen (18) months ago.

PARAGRAPH FIVE: Respondent denies that the offer of eye glasses

for \$7.50 as actually set forth in his advertisements was not a bona fide offer. Respondent is without sufficient knowledge as to what prices are charged by other establishments and whether respondent's prices are substantially below such other establishments. Respondent's offering is entirely without regard to, and is not intended to have a relation to, the advertisement of others.

PARAGRAPH SIX: Respondent denies the allegations of Paragraph Six of the Complaint. The respondent in further answer reiterates and incorporates his statements set forth in his answer to Paragraphs numbered Four and Five of the Complaint. Respondent denies specifically any false or misleading advertising.

PARAGRAPH SEVEN:

1. Respondent denies detaining persons; he admits that he offers free gift cards to prospective customers, and that such free gift offer is bona fide and without obligation on the part of said prospective customers. Respondent denies that any determination is made or questions asked of such prospective customers in regard to their jobs, and further states that all such free gift offers are made indiscriminately and without any prior determination whatsoever. Respondent admits that said prospective customers are invited to make purchases, but denies that any credit is extended without a determination as to the credit status and risk involved. All of the other allegations of said Paragraph Seven (1) are denied.
2. Respondent admits that he affixes tickets to his merchandise bearing the retail prices thereof, but denies that he makes any representations directly or by implication, with respect to such prices. Respondent alleges that his price tickets state the purchase price only and include no other wording or representation whatsoever. Respondent denies such pricing constitutes any representation other than his own price. Respondent denies that no determination is made with respect to customers' credit rating, but on the contrary, alleges that a credit determination is made. Respondent is without sufficient knowledge to form an opinion as to prices charged for like or similar merchandise by other retail establishments in the same trade area. Respondent denies that the prices charged by him are unconscionable. Respondent further alleges that his customers are made fully aware of the credit charges, and that the conditional sales contracts used by him specifically state the full amount of the credit charges which are never in excess of one and one-half percent (1½%) per month on the unpaid balance. All other allegations of Paragraph Seven (2) are denied.

PARAGRAPH EIGHT: (1), (2) and (3). Respondent denies that he takes unfair advantage of his customers. Respondent states that the allegations set forth in Sub-paragraphs 1, 2 and 3 of Paragraph Eight of the Complaint herein are not susceptible to responsive pleading on the part of this respondent and further states that such allegations are redundant and repetitive of prior allegations of the Complaint which have been heretofore answered by this respondent. Respondent denies that his acts and practices are contrary to public policy, or are otherwise false, misleading, deceptive or unfair. All other allegations of Paragraph Eight are denied.

PARAGRAPH NINE: Respondent avers that he makes no representations whatsoever which are false, misleading or deceptive. All other allegations of Paragraph Nine are denied.

PARAGRAPH TEN: Respondent alleges that in the operation of his business he has made no misrepresentations nor has he violated any law or statute governing the operation of his business. He denies each and every allegation contained in Paragraph Ten.

Further answering, respondent maintains that many of the averments of the Complaint constitute only conclusions of law and not allegations of fact to which he can respond. Respondent further says that the Complaint seeks to impose upon him in the operation of his business restraints and standards not supported by law.

WHEREFORE, having answered, respondent prays that the Complaint filed herein be dismissed.

GROSSBERG, YOCHELSON, BRILL & FOX

By: _____

Irving B. Yochelson

By: _____

Mervyn I. Aronoff

Attorneys for Respondent
1707 H Street, Northwest
Washington, D. C. 20006
298-7600

FILED: June 26, 1967

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
LEON A. TASHOF, individually
trading as
NEW YORK JEWELRY COMPANY.

DOCKET NO. 8714

INITIAL DECISION

By Raymond J. Lynch, Hearing Examiner

Howard S. Epstein and Walter C. Gross
for the Commission

McKean & Whitehead
Washington, D. C.
By David J. McKean for the Respondent

Statement of Proceedings

The Federal Trade Commission issued its complaint against the above-named respondent on September 29, 1966, charging the respondent with the use of false, misleading, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act by the use of false and misleading advertising representations and practices in the sale of merchandise to the consuming public. A copy of the complaint was served upon the respondent on October 1, 1966. Respondent filed an answer to the complaint admitting and denying certain of the allegations contained therein. The respondent denied having engaged in any alleged acts or practices violative of Section 5 of the Federal Trade Commission Act.

Pursuant to order of the examiner prehearing conferences were held on November 7, November 22 and December 12, 1966. On December 14, 1966, counsel for respondent filed a motion with the examiner requesting that the examiner certify to the Commission a consent agreement and order. The matter was certified to the Commission on December 19, 1966, and on February 6, 1967, the Commission issued its Order remanding the matter to the examiner ordering "expeditious conclusion of adjudicatory proceedings". The matter was set for hearing on February 16, 1967, but complaint counsel was unable to proceed and the hearing was postponed until March 20, 1967. Hearings were held on March 20, 21, 22, 23 and 24, and proposed findings of fact, conclusions of law and proposed orders were filed by the parties on May 8, 1967.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, transcript, exhibits and proposed findings of fact and conclusions filed by the parties.

Consideration has been given to the proposed findings of fact, conclusions of law and arguments presented by the parties. All proposed findings of fact and conclusions of law not hereinafter specifically found or concluded are rejected. The hearing examiner having considered the entire record makes the following findings of fact, conclusions drawn therefrom and issues the following order.

Findings of Fact

1. Respondent Leon A. Tashof is the sole proprietor of a retail store located at 719 Seventh Street, N. W., in the City of Washington, District of Columbia. Respondent does business under the name New York Jewelry Company. (Adm. in Ans.)

2. Respondent formulates, directs and controls the acts and practices of the New York Jewelry Company as hereinafter set forth. (Adm. in Ans.)

3. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of various kinds of goods, including, but not limited to, watches, radios, rings, furniture, cookware, eyeglasses, television sets and other electrical appliances to the public. Respondent's customers are principally of the low-income group and the preponderance of respondent's sales to such customers are on credit.

4. In the course and conduct of his business, respondent now causes, and for some time last past has caused said merchandise, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. Paragraphs 4, 5 and 6 of the complaint allege that the respondent in the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his merchandise by the consuming public has made numerous statements in advertisements inserted in newspapers and by other means with respect to the sale of eyeglasses, and other merchandise.

Typical and illustrative of the aforesaid statements is the following:

"DISCOUNT
EYE GLASSES
MADE WHILE YOU WAIT
Price includes from \$7.50
lenses, frames complete"
and case

Complaint counsel contend that by and through the use of the aforesaid advertisement, and others of similar import not specifically set forth herein, the respondent has represented directly or by implication that the offer of eyeglasses for \$7.50 is a bona fide offer and that respondent is selling eyeglasses at discount prices substantially below the prices charged by other establishments for similar corrective eyeglasses.

The complaint alleges that in truth and in fact respondent's offer of eyeglasses at a price of \$7.50 is not a bona fide offer. It is made for the purpose of inducing prospective purchasers of eyeglasses to enter respondent's place of business whereupon the quality of the \$7.50 eyeglasses is disparaged and their purchase otherwise discouraged and an attempt is made, frequently with success, to sell eyeglasses costing substantially more. Furthermore, respondent's prices for eyeglasses are not discount prices nor are they substantially below the prices charged by other establishments for similar corrective eyeglasses.

Complaint counsel conclude that the representations set forth in Paragraphs 4, 5 and 6 were and are false, misleading and deceptive.

The Commission has placed in evidence one sample advertisement which appeared in the Washington Daily News on January 29, 1965, (CX 114, Tr. 314). Testimony shows that this ad ran approximately once a week for the period of a year and a half. The date on which Commission Exhibit 114 appeared, January 29, 1965, was neither the beginning nor the end of this advertising campaign, but sometime during the middle of the campaign. (Tr. 355) Therefore, this campaign began sometime during 1964 and was discontinued by the end of 1965. (Tr. 418, 420)

The advertisement has not been quoted in its entirety in the complaint. The actual text of the advertisement also contains the following language: "Oculists' prescription filled, or have your eyes examined by our registered optometrist. Moderate Examining Fee". (See CX 114) Eyeglasses, at a price of \$7.50, were thus offered to customers bringing with them a signed prescription from an ophthalmologist.^{1/} The stipulated evidence shows that less than ten pairs of eyeglasses were sold at the \$7.50 price, under such circumstances, in each of the years 1964 and 1965. (Tr. 420) This advertising campaign had been discontinued prior to the start of 1966, and no sales of eyeglasses were made at the \$7.50 price during 1966 or subsequently.

While the number of eyeglasses sold during 1964 and 1965 at this price was only a small fraction of respondent's total sales of eyeglasses, there is no evidence to indicate that respondent did not honor the terms of the advertisement. The purchase of eyeglasses at \$7.50 was not discouraged by disparaging their quality. (Tr. 382) The Commission has offered into the record absolutely no evidence, either from store personnel, from customers, or from any other source, that sales of eyeglasses at \$7.50 were discouraged, or that the quality of such eyeglasses was ever disparaged.

Paragraphs 4, 5 and 6 of the complaint have not been sustained by a preponderance of reliable substantial and probative evidence and therefor must be dismissed.

^{1/} Oculist and ophthalmologist are synonymous terms. (Tr. 421; see also Webster's New Collegiate Dictionary, 2d ed.) An ophthalmologist is a licensed Doctor of Medicine who specializes in the care and treatment of the eye and eye diseases, and who can and does prescribe corrective eyeglasses for vision defects caused by refractive errors in a patient's eyes.

6. Paragraph 7 section 1 of the complaint alleges that the respondent engaged in the following acts and practices:

1. He detains passers-by on the street around and about his place of business and after determining that they have a job where a garnishment can be obtained against their wages he presents them with a "Free Gift" card (example attached hereto as Exhibit "A" and made a part hereof), and invites them to enter his store to receive a "free gift" or a "free" eye examination without the need to buy anything and without other obligation. When the recipients of such "free gift" cards enter respondent's store they are given an inexpensive item such as a small pocket comb or a ball point pen. While in respondent's store they are informed that their credit is good and that therefore they can purchase any item in the store including eyeglasses on easy credit terms with no money down. At the urging of respondent or his employees many persons who have entered respondent's store to receive "free" eye examinations or "free" gifts have purchased eyeglasses or other merchandise on the so-called "easy credit terms".

As a result of engaging in the above conduct, complaint counsel allege that the respondent's acts and practices are contrary to public policy, and are false, misleading, deceptive or unfair. How the acts and practices set forth above violate Section 5 of the Federal Trade Commission Act has neither been pointed out by complaint counsel nor has any evidence been introduced in the record to sustain the charge that the acts and practices of the respondent violated any law.

7. Section 2 of Paragraph 7 charges that:
2. Respondent affixes tickets to his merchandise bearing the retail prices thereof, thereby representing, directly or by implication, that such prices are competitive and reflect the reasonable or fair market value of such merchandise. Without determining his customers' financial ability to pay or their credit rating respondent sells merchandise to them on "easy credit terms" at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash. (For example: transistor radios costing respondent \$3.45 bear a retail price of, and are sold by respondent for \$59.50.) In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract.

Before discussing all of the allegations in this paragraph, it should be pointed out that although the complaint charges respondent with selling a transistor radio costing respondent \$3.45 at a price of \$59.50, there is no evidence in this record to substantiate this allegation. The record discloses that respondent purchased 72 transistor radios (Invoice 32793, CX 122) and that they were sold at prices ranging from \$2.88 (plus tax) to \$8.19 (including tax). The six-transistor radios were sold at \$2.88, the eight-transistor radios at \$3.88 and the ten-transistor radios at \$4.88 with the exception of nine sales at prices from \$1.03 up to \$8.19.

8. The complaint charges that respondent sells merchandise to his customers "at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise in other retail establishments in the same trade area . . .". (Complaint, Paragraph 7, Section 2)

9. The complaint also charges that "In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract". (Complaint, Paragraph 7, Section 2)

10. These allegations, sales at unconscionably high prices and a failure to disclose credit charges, constitute the main thrust of the complaint. Before going into the question of whether, if proved, these allegations would be violative of Section 5 of the Federal Trade Commission Act, the examiner has reviewed the entire record and finds that the allegations have not been proved by a preponderance of the evidence. Table 4 of respondent's proposed findings, attached hereto and marked Appendix A, reflects the record evidence dealing with transactions resulting in the sale of 17 different items of merchandise by respondent. Column 1 of the table identifies the merchandise and purchaser, column 2 reflects the price obtained by respondent for such merchandise and column 3 shows the comparative price evidence of record.

11. There is nothing unusual about the retail price charged by respondent for any of these items of merchandise. And there is an almost complete lack of evidence in the record bearing on the question of the price charged for similar merchandise by other sellers. The record does contain testimony from Mr. Ullman reflecting the common or usual price range charged by other sellers for reconditioned used TV sets. (Tr. 378) Aside from that, complaint counsel have seen fit to attempt to offer comparable price evidence in the case of only one item of merchandise. That one item of merchandise is a watch belonging to Mr. Roland Taylor (CX 9, 26A, B, C). Complaint counsel made no effort to check the history of the watch offered in evidence. Respondent's counsel, however, made a complete investigation and it was determined that the watch offered in evidence had not been sold by the respondent but that the watch had been purchased by Mr. Taylor's wife from Weinstein's Pawnbrokers, Washington, D. C.

Credit Charges

Table 2 of respondent's proposed findings (Appendix B) sets out 26 contracts entered into between respondent and certain purchasers of merchandise.

When the contracts are arranged in the order of their dates, the sequence reveals the approximate times at which respondent's policy regarding the method of computing these credit charges was changed. Such a tabulation provides information on the manner in which such carrying charges were disclosed, and also shows respondent's practice with regard to the disclosure of the total purchase price for merchandise bought in such credit transactions.

In Table 2 the first column shows the date appearing on the contract, the second column shows the exhibit number of the contract, and the third column gives the name of the purchaser. Column 4 shows a code letter for each different form of contract employed, or for each different manner of computation used in connection with a given form of contract. Column 5 shows the cash price of the item or items purchased. (This is the same as the ticketed price at which the merchandise was offered for sale by New York Jewelry.) Column 6 shows the carrying charges, and column 7 the total purchase price, as reflected by each contract in question.

The first four entries and the sixth entry in the table relate to five contracts (CX 17, 19, 21, 37 and 38), all of which employ the same contract form. This form has been designated, in column 4, as contract form A. These five contracts reflect purchases from September through December of 1965, by James E. Freeman (CX 37, 38), Walter Whitfield (CX 19), Roland Taylor (CX 21) and Mary Daughtry (CX 17). A reference to Commission Exhibit 37, the first of these contracts, will show the form employed and the manner in which the information in question is disclosed or displayed. The other four contracts (CX 17, 19, 21, 38) are identical in form, and the comments made about this contract would apply to the transactions reflected by the other four contracts as well.

In contract form A, only the total price charged (including both the cash price and the carrying charges) is specifically revealed. In the case of this first contract (CX 37), that price is \$71.50. The cash price of the merchandise does not appear in the body of the contract. In this instance we know from the stipulated testimony of Mr. Freeman that the price for this pair of glasses was \$59.50. (CX 7) We can also tell the cash price of the merchandise from an imprint made on the side of the contract by the cash register in the course of ringing up the transaction. This cash register imprint shows the figures "\$59.50", which corresponds with Mr. Freeman's stipulated testimony about the cash price of the eyeglasses covered by this contract. The credit charge or financing fee in this case is obviously the difference between the cash price (\$59.50) and the total price appearing on the face of the contract (\$71.50). Since disclosure of the exact amount of the total price to be charged for the merchandise is made in dollars and cents on the face of the contract, the purchaser would be made aware of the credit charge by noting the difference between the cash price at which the merchandise is ticketed, and the total price appearing on the face of the contract.

The contract with Mary Daughtry (CX 17) has been signed in blank and neither the total price, nor by implication the credit charge, appear on this contract.

It is obvious that the use of contract form A was discontinued sometime during late December 1965, and that it was superseded by contract form B which first appears in the transaction of December 23 with Roland Taylor (CX 22).

The four contracts employing form B are dated from December 1965 through mid-January 1966 and reflect purchases by Roland Taylor (CX 22), Synithia G. Washington (CX 42, 43, 44), and Minnie A. Henry (CX 31).

Contract form B differs in format from contract form A. It shows, in the upper right-hand portion of the contract, the total cash price, the unpaid balance after trade-ins or allowances, the carrying charges expressed in an exact dollar amount, and the total price including carrying charges. The total price is described by the phrase "time price". This is followed by blanks for showing any existing balance on the account, the total indebtedness of the account, and the payment terms. Reference to Commission Exhibit 43 will show in the case of a simple transaction how this contract form discloses the information involved.

In contract form B complete disclosure is made, both of the carrying charge expressed as a dollar amount, and of the total price for the article including the carrying charge. This contract form does not disclose the rate of carrying charge, but an inspection of the four contracts involved (CX 22, 31, 42, 43, 44) reveals that the carrying charge percentage is approximately 18 per cent. This is roughly equivalent, on an annualized basis, to the 1-1/2 per cent per month commonly charged by most retail establishments, since 1-1/2 per cent per month x 12 months equals 18 per cent.

Mr. Ullman was questioned about two contracts executed on contract form B, and falling into this group. There were the two contracts executed on January 8 by Synithia Washington (CX 42, 43, 44). Mr. Ullman testified that, at that time, New York Jewelry figured a flat carrying charge (Tr. 201), and, after some confusion in the record, it was established that the flat carrying charge at this time was 18 per cent (Tr. 201-204).

It is clear that sometime around January 1966, this method of computation was discontinued. The next four contracts, bearing dates from mid-January to March 1966, reflect purchases by Charles Logan (CX 99), Etta Calloway (CX 105), James Crowder (CX 94) and Elly Freshley (CX 74). These contracts are all made on a form identical with contract form B discussed just previously, but it is apparent that a change in the method of carrying charge computation was made. These contracts are designated in Table 2 as form B-1.

In these contracts only the cash price is disclosed. The contracts do not on their face reveal either the amount or rate of the carrying charges. There is no evidence in the record which would indicate whether there were any carrying charges on these four contracts, or what the amount or method of computation of such carrying charges were, if such charges existed. Mr. Ullman was questioned about the contract with Charles H. Logan, dated January 18, 1966 (CX 99), and was not able to tell from that one contract why no carrying charges were reflected on its face.

At approximately the end of March 1966, New York Jewelry made another change in its method of computing carrying charges, and in the manner of disclosure of such charges and the total credit sales price. We refer now to the next group of nine contracts in chronological order, bearing dates from March 30, 1966, through May 1966. These contracts were entered into by Preston White (CX 1), Barbara Brown (CX 111), Elsie Hall (CX 112), Vernetta Henderson (CX 109), Arthur Pratt (CX 68), Rosa Wesly (CX 89), J. L. Dennard (CX 84), Alfreda Stubbs (CX 62) and John Edmunds (CX 121). These contracts still employed basic contract form B, but now in addition to the cash price, a definite dollar amount is shown as carrying charges, and a total price (being the sum of the cash price and the carrying charges) is also disclosed on the face of the contract. These contracts are designated in Table 2 as form B-2.

According to the testimony of Mr. Ullman, during this time period, New York Jewelry employed a pre-computed chart or table to determine carrying charges. This chart was based on the cash price involved, and the term, or length of the contract. As a result, the amount of carrying charges disclosed on the face of the contract would vary, depending both on the amount of the cash price, and on the time period over which payments were to be made. Obviously, a credit sales contract to be paid up in a short time would bear a smaller carrying charge (and hence the carrying charge would be a smaller percentage of the cash price) than would a contract with a longer term. (Tr. 190-1, 195-9, 202-3) Mr. Ullman testified that the basic carrying charge rate used in preparing this pre-computed table was approximately 1-1/2 per cent per month (Tr. 303-5).

As shown in Table 3, below, a comparison of the cash prices, carrying charges and terms of these nine contracts, reveals a close correlation between the overall carrying charge percentage and the number of weeks the contract was to run.

Table 3

Comparison Showing Relation of Carrying Charge
Percentage to Length of Contract Form

<u>Exhibit Number</u>	<u>Approximate Repayment Term (in weeks)^{a/}</u>	<u>Carrying Charge as Percentage of Cash Price (approximated)</u>	<u>Carrying Charge</u>	<u>Cash Price</u>
CX 1	4 ^{b/}	2.26% ^{c/}	\$ 1.38	\$ 61.30
CX 109	5 ^{b/}	1.98% ^{c/}	1.00	49.50
CX 89	7	2.12%	1.00	49.50
CX 111	9	2.25%	1.00	44.50
CX 84	11	2.52%	1.00	39.95
CX 121	23	3.66%	7.30	199.52
CX 112	21	4.00%	1.00	25.00
CX 68	32 ^{b/}	7.95% ^{c/}	8.43	106.60
CX 62	32	9.40%	18.60	174.90

a/ As computed from contract.

b/ This is the approximate time in weeks, which it would take to pay off the contract cash price at the repayment schedule shown. Since this contract shows an additional account balance, the total account would not be completely paid in so short a time.

c/ These contracts bear interest percentages which are slightly higher than we would expect to find judging from cost of the merchandise purchased in the contracts. In all three instances, however, the contract reflects the pre-existence of an unpaid balance on the account resulting from the previous purchase of other merchandise. These larger balances undoubtedly necessitated a longer term of repayment, and, hence, tended to increase the percentage of carrying charge to face amount of the contract.

It should be apparent from the foregoing that New York Jewelry has attempted to make the fullest and most adequate disclosure of both the total price to be paid, and the carrying charges imposed on credit sales. During the first half of 1966, respondent experimented with four different systems of charging and disclosing such carrying charges, and revised its conditional sales contract form twice in an effort to impose carrying charges which could be readily disclosed to, and understood by, its customers.

Turning to the evidence regarding the sale of eyeglasses with special reference to unconscionably high prices, Table 5, marked Appendix C, discloses that complaint counsel has failed to meet the burden of proof required to sustain the allegations of unconscionably high prices.

Dr. Ephriam's testimony cannot be relied upon to support the claim that the prices charged by New York Jewelry Company are greatly in excess of the prices charged for eyeglasses by other sellers thereof. In fact, as shown by Table 5, when Dr. Ephriam's prices have been adjusted to reflect variations which he testified about, and to include the examination charge which of necessity is paid by purchasers of eyeglasses, it is apparent that the prices charged by New York Jewelry Company are well within normally encountered limits. The prices charged by New York Jewelry Company may be in some cases slightly lower, or in some cases slightly higher than those of other sellers; but in no case are they "greatly in excess" of, or "unconscionably" higher than, the prices which we might expect to find charged by other sellers of eyeglasses.

Conclusions

This case was founded upon the premise expounded by complaint counsel in one of the prehearing conferences, that the problems involved in the complaint required that new ground needed to be plowed in order to right the wrongs

of a part of our economic system particularly as they affect the low-income class of our society. The examiner finds complaint counsel's motives commendable. However, the evidence adduced cannot support the allegations of the complaint that might conceivably fall within Section 5 of the Federal Trade Commission Act. Furthermore, the attempt to impose some type of price control and credit regulations under Section 5 would require more than plowing new ground. Indeed the Congress has been struggling with proposed legislation in this area for a number of years. If Section 5 was intended to cover matters of this type, it seems unlikely the Congress would be seeking special legislation to cover some of the practices alleged in the complaint.

Complaint counsel recognize the problem by stating in their proposed findings:

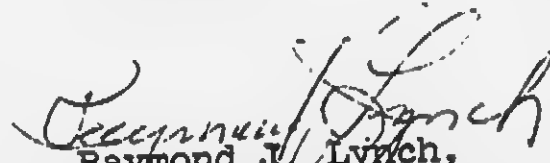
"Counsel Supporting the Complaint recognize that many of the issues raised and litigated in this proceeding have not previously been adjudicated by the Federal Trade Commission. Although some of the issues in this case represent somewhat of a departure from traditional deceptive practice cases brought pursuant to Section 5 of the Federal Trade Commission Act, it must be realized that new problems and newly recognized practices require new approaches and new applications of existing laws."

"The mere fact that the Commission's authority may not have been used in a given situation in the past, and the fact that it may be a difficult task to frame an order that is both effective and legally precise and enforceable within traditional concepts must not stand in our way."

For all of the reasons set forth above the examiner is of the opinion that this complaint must be dismissed not only because of the failure to prove the allegations of the complaint but that the Federal Trade Commission under Section 5 of the Federal Trade Commission Act does not have jurisdiction to regulate price controls or credit practices in the market place.

ORDER

IT IS HEREBY ORDERED that the complaint in this proceeding be, and the same is, hereby dismissed.


Raymond J. Lynch,
Hearing Examiner.

June 26, 1967.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
Mary Gardiner Jones
James M. Nicholson

In the Matter of

LEON A. TASHOF,
 individually trading as
NEW YORK JEWELRY COMPANY.

DOCKET NO. 8714

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision and upon briefs and oral argument in support of and in opposition to said appeal; and

The Commission having determined for the reasons stated in the accompanying opinion that the findings and conclusions and order contained in the initial decision should be set aside in accordance with the views expressed in the accompanying opinion,

IT IS ORDERED that the initial decision be vacated in its entirety and that the Commission's findings and conclusions as expressed in the accompanying opinion be entered in lieu thereof.

IT IS FURTHER ORDERED that the hearing examiner's order dismissing the complaint be vacated and that an order to cease and desist be entered which reads as follows:

ORDER

IT IS ORDERED that respondent, Leon A. Tashof, an individual, trading as New York Jewelry Company, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of any merchandise, products, goods or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any merchandise or service is offered for sale when such offer is not a bona fide offer to sell such merchandise or service at the stated price.

2. Representing, directly or by implication, that any article of merchandise is offered for sale or sold at a discount price or at a price below the price charged by other retail establishments for the same or substantially similar merchandise unless respondent shall have conducted, within twelve months before making any such representation, a statistically significant survey of principal retail establishments in the same trade area, which survey establishes that a substantial number of such outlets sell the same or similar merchandise at prices substantially above the prices represented

by respondent to be discount, and unless respondent shall retain all documents relating to the manner in which such survey was conducted and the results thereof for at least twenty-four months after making any such representation.

3. Representing, directly or by implication, that respondent's terms of credit are lenient, including but not limited to the representations that respondent offers "easy credit" or that potential customers have a "preferred" credit rating.

4. Representing, directly or by implication, the rate of a finance charge, the amount of downpayment, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment unless respondent clearly and conspicuously discloses, in immediate conjunction with such representation, all of the following items:

(a) The cash price.

(b) The time price, consisting of the sum of the cash price, all finance charges, and any other extra charges before deducting any downpayment or allowance for a trade in or otherwise.

(c) The downpayment, if any.

(d) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(e) The rate of the finance charge expressed as an annual percentage rate.

5. Representing the rate of a finance charge as any periodic rate unless the annual percentage rate is also disclosed in immediate conjunction with, and equally as conspicuously as, any other periodic rate.

6. Failing to disclose orally and in writing to each customer who executes a retail installment contract, or who otherwise purchases merchandise or services from respondent on credit, before such customer obligates himself to make any such credit purchase, all of the following items:

(a) The cash price of the merchandise or service purchased.

(b) The sum of any amounts credited as downpayment (including any trade-in).

(c) The difference between the amount referred to in paragraph (a) and the amount referred to in paragraph (b).

(d) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(e) The total amount to be financed (the sum of the amount described in paragraph (c) plus the amount described in paragraph (d)).

(f) The amount of the finance charge.

(g) The finance charge expressed as an annual percentage rate.

(h) The total credit price (the sum of the amounts described in paragraph (e)

Plus the amount described in paragraph (f) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price.

(i) The default, delinquency, or similar charges payable in the event of late payments as well as all other consequences provided in the sales or credit agreements for late or missed payments.

(j) A description of any security interest held or to be retained or acquired by respondent in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

For purposes of paragraph 4-6 of this order, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under [§106 and §107 of] Public Law 90-321, the "Truth in Lending Act," and the regulations promulgated thereunder.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

By the Commission. Commissioner Nicholson did not participate for the reason oral argument was heard prior to his appointment to the Commission.

S E A L


Joseph W. Shea
Secretary

ISSUED: December 2, 1968

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
Mary Gardiner Jones
James M. Nicholson

In the Matter of

LEON A. TASHOF,
 individually trading as
NEW YORK JEWELRY COMPANY.

DOCKET NO. 8714

OPINION OF THE COMMISSION

By Jones, Commissioner:

Complaint in this matter was filed on September 29, 1966 charging the respondent Leon A. Tashof, trading as New York Jewelry Company, with violations of Section 5 of the Federal Trade Commission Act.

The complaint charges that respondent has violated Section 5 because it has engaged in bait and switch advertising with respect to its sale of eyeglasses and misrepresented its eyeglass prices as discount (Complaint, PAR. FOUR, FIVE and SIX), and because it has engaged in unfair and deceptive practices in its failure to disclose finance charges and in some instances cash prices of its merchandise (Complaint, PAR. SEVEN, EIGHT). Its representations of easy credit are also challenged as deceptive

and unfair because its cash prices are in excess of those prevailing in the marketplace and are at unconscionably high levels. The complaint also alleges that respondent fails to determine the financial ability of its customers to pay before extending them credit and thereafter seeks garnishment or other legal action against those who fail to make their credit payments (Complaint, PAR. SEVEN, EIGHT).

The hearing examiner dismissed the complaint because in his view counsel supporting the complaint failed to carry the burden of proof on any of the complaint allegations and for the further reason that the Commission lacks jurisdiction "to regulate price controls or credit practices in the marketplace" (I.D. 15). 1/

Counsel supporting the complaint has appealed. For reasons which will be discussed in detail later in this opinion, we believe that the hearing examiner was in error both as respects his findings of the facts and as respects his view of the law applicable in this case. Accordingly, we are vacating his decision in its entirety and will enter our own findings and conclusions which will be developed more fully below.

I

The Respondent

The respondent New York Jewelry is a retail store located at 719 7th Street in Washington, D. C. Watches, jewelry and eyeglasses account for 90% of its sales with

1/ As used herein, I.D. refers to pages in the initial decision filed June 26, 1967; A.B. to pages in the appeal brief of counsel supporting the complaint; R.B. to pages in respondent's brief in answer to the appeal brief; Tr. to pages in the transcript of the hearing before the hearing examiner; CX to exhibits introduced by counsel supporting the complaint; and RX to exhibits introduced by respondent.

the remaining 10% accounted for by such items as cookware, transistor radios, furniture, and used TV's (Tr. 136-7).

Respondent's store is located in one of the low-income market areas in the District of Columbia (Tr. 432, 440). 1/ Many of respondent's customers hold extremely low-paying jobs, have no bank accounts or charge accounts, and do not own their own home. Many of its customers are Negro. 2/ Respondent's advertising specifically appeals to those people who cannot obtain credit elsewhere or who have lost their credit (e.g., CX 52-56 and 123).

New York Jewelry makes about 85% of its sales on credit (Tr. 152) and has, during at least one recent year, filed lawsuits for collection against nearly one out of every three of its customers. 3/ Its general manager for

1/ See the testimony of Mr. Joseph Bellenghi, Assistant Director of Examination and Accounting for the Federal Credit Unions, called as an expert witness by complaint counsel. Although some of Mr. Bellenghi's testimony was not admitted by the hearing examiner after objection by respondent's counsel, the testimony cited here was admitted without objection. Mr. Bellenghi described the customers who typically trade in these low-income market areas as those who do not usually qualify for credit in stores outside these areas; who often have just recently emigrated to the city from rural areas or from the South; who are from a low status of life, immobile economically, educationally and socially; and who require some kind of personalized service or treatment in their relationship with the merchants with whom they deal (Tr. 433).

2/ This evidence is contained in the credit applications for a number of respondent's customers introduced into the record and stipulated testimony of others of respondent's customers which is summarized and attached hereto as Appendix A.

3/ See infra pp. 41-42.

the past 25 years, Mr. Ullman, estimated that in the calendar year 1965 New York Jewelry's sales were \$355,000 (Tr. 151, 359, 365). The gross profit for that year was \$310,529 (CX 124 admitted in camera; Tr. 489-495).

The store maintains an optical department and maintains a contractual arrangement with an optometrist who is paid \$5.00 per customer to examine eyes and prescribe eyeglasses on the premises (Tr. 155-6). However, its eyeglasses are assembled by Mr. Ullman who has not had any formal training as an optician (Tr. 155).

All of the merchandise for sale at New York Jewelry bears price tickets which also reflect in a letter code, the cost of the item to New York Jewelry (Tr. 161-2, 331). In the case of its watches, the general manager testified that respondent removes the manufacturer's suggested retail price tickets and replaces them with its own price tickets, charging higher prices than those suggested by the manufacturer (Tr. 332-5). The general manager also testified that respondent departs from this policy in a few isolated instances with respect to some items and affixes a low selling price which it thereupon advertises to "stimulate traffic" (Tr. 334, 546, 573-4, RX 42).

New York Jewelry promotes its products through advertising on radio, and in the press, by personal solicitations outside its store and by direct mailings (Tr. 158, 355, 364, 401). It runs about 10 spot commercials each week on each of the stations WOOK and WUST (Tr. 354, 158). These radio commercials emphasize that the prices at New York Jewelry are "bargain" prices, that customers will receive ". . . outstanding values and easy credit," and that respondent's products are "Bargain priced on easy credit" (CX 52-56). Several of these commercials announce:

"Mr. Tash gives credit to everybody. Even if you have never had credit, have lost your credit, or if others have turned you down."

The commercials also represent that because of New York Jewelry's easy credit terms, people will be able to buy and enjoy "the good things of life" which they would not otherwise be able to do. "I'll help you to enjoy the good things of life. I'll give you easy credit terms" (CX 52, 54, 55). Respondent's advertising represents not only that credit is always available at New York Jewelry but also that the terms of such credit are easy. The radio commercials repeatedly emphasize that the terms of credit are "easy" and several represent "no money down" and "budget terms to suit", or "the manager will arrange terms", and "take a long time to pay" (See esp. CX 52 and 54). Respondent's advertisements in the Washington Daily News newspaper emphasize the same general themes of discount prices and easy credit (e.g., Tr. 355, CX 114, RX 42). Respondent also stations an employee at the sidewalk in front of the store to attract people into its store by telling passers-by that they can get a free gift inside (Tr. 364) and handing them a card which reads as follows:

Because We Appreciate Your Business

Mr. Tash, the Mgr., Says:

I'll give credit to everybody even if
you never had credit, Lost your credit,
or others have turned you down.

CREDIT CARD)
New York Jewelry Company)
719-7th Street, N. W. - Washington, D.C.)

Certifies that BEARER)
is an AAA-1 Preferred Customer)
Instant Credit)
No Money Down)
Make Your Own Terms)

This card certifies that you)
have a preferred credit rating and)
attests to your character ex-)
cellence.)

[CX 123]

-5-

FREE GIFT
FOR YOU:

No obligation
Don't buy a
Thing
Don't Spend a
Minute
Just Present This
Card and

Get Your
FREE GIFT
Your credit is Good!
NO MONEY DOWN
Pay as little as 50¢
Per Week
New York Jewelry Company
719 7th Street, N.W.
Washington, D. C.

The same card or handbill is also used as a direct mailing piece (Tr. 401).

II

The Complaint Allegations

1. Respondent's Advertising of Its Eyeglasses

The complaint alleges that respondent advertised eyeglasses at a price which was not a bona fide offer (\$7.50) and further that the prices at which it sold eyeglasses were not discount prices, as represented, but were substantially in excess of prices charged by other establishments for comparable merchandise (Complaint, PAR. FOUR, FIVE and SIX).

The hearing examiner concluded that the bait and switch allegation was not sustained because counsel supporting the complaint failed to prove that respondent had ever refused to honor the terms of its alleged "bait" advertisement or that respondent had ever disparaged the quality of these advertised eyeglasses or discouraged a customer from purchasing a pair, which practices were included in the complaint as part of the bait and switch allegation. The hearing examiner failed to state any specific conclusion on the allegation that respondent deceptively represented its prices for eyeglasses to be discount prices.

We believe that the record in this case contains clear and convincing factual evidence in support of both these complaint allegations and that the hearing examiner applied an erroneous standard of law to the record facts bearing on the bait and switch charge. We will deal separately with these two basic charges of bait and switch and discount misrepresentations.

(A) The Bait and Switch Charge

Respondent advertised both in the newspaper and on radio that it was offering discount eyeglasses at \$7.50 and up (CX 114). One of its newspaper advertisements for discount eyeglasses which ran once a week for a year and a half is reproduced in its entirety in Appendix B attached hereto. 1/ This advertisement contains a headline "CREDIT in a FLASH says MR. TASH, The Manager," which is then followed by bold faced legends "DISCOUNT EYE-GLASSES", "Made While You Wait", "Price Includes lenses, frame and case", "From \$7.50 complete." These are followed by the words in somewhat less prominent type:

"Glasses attractively Styled
Made Individually to Your
Prescription"

Immediately following this legend is an additional statement in smaller type which is the least prominent of any in the advertisement:

"Oculists' prescription filled - or
have your eyes examined by our
registered optometrist.
Moderate Examining Fee"

Respondent's radio advertising for its eyeglasses was as follows:

1/ Exhibit CX 114, a duplication of this newspaper advertisement, is not sufficiently clear to use for further duplication. Thus Appendix B is an enlarged reproduction from a microfilm copy of the original advertisement as it appeared in the newspaper.

"I'll protect your eyes and protect your pocketbook" . . . "eyeglass service at economy prices" . . . "complete eyeglasses, including lenses and frame, for as low as \$7.50" . . . "economy eyeglass service--get broken lenses duplicated as low as \$2.00, frames as low as \$1.00" . . . "other modern glamorous, luxurious and good-looking frames, at low discount prices . . . a liberal trade-in allowance for your old frames, even if broken. Oculists' prescriptions filled at low economy prices . . . be thrifty . . . protect your eyes and protect your pocketbook at the thrifty economical discount department of the New York Jewelry Company" (CX 56).

Respondent regularly maintained a sign in its store, and apparently also in the window for a period of time, which states "Free eye examination, our doctor is in the store" (CX 5, Tr. 314, 315). Respondent also had mailed out cards offering "Free eye examinations" (CX 8) and one of its employees stationed in front of the store offered "free eye examinations" to attract people into the store (CX 7).

Respondent urges that the \$7.50 discount price was not false or deceptive and that the advertising only represented the price of respondent's eyeglasses if its customers brought an optical prescription already made out for New York Jewelry to fill (Tr. 419, R.B. 4-5). Moreover, respondent's counsel argues that respondent honored the terms of these advertisements, according to its interpretation of them, that there is no direct evidence that it disparaged the quality of such glasses or otherwise discouraged their sale, and that, therefore, the bait and switch allegation must fail as a matter of fact and of law.

There is no doubt that respondent's newspaper advertisement highlighted the availability of DISCOUNT eyeglasses complete from \$7.50 while at the same time--albeit in less prominent type--referring to a "moderate examining fee". But reference to moderate examining fee was in direct conflict with respondent's direct mail solicitations, its signs in its store and the oral representations of its salesmen that eye examinations would be given free. Moreover, its radio commercial was consistent with its mail solicitations and point of sale representations. This commercial (CX 56) made no mention of examination fees and indeed represented that respondent was offering "eyeglass service" at economy prices and later on spoke of "complete" eyeglasses for as low as \$7.50. We do not believe that any listener would be aware from this commercial that eyeglass service did not include an examination or that they would be charged an extra examination fee in addition to the quoted price of \$7.50.

Respondent's in-store sign stating "free eye examinations" and the absence of any reference to an examination fee in its radio commercial are entirely consistent with respondent's description of eyeglass sales on its conditional sale contracts. Typically, the contracts describe the transaction as involving merely "glasses" (CX 21, 37, 48, 66, 69, 74, 84, 99, 105, 111, 121) or "optical service" (CX 31, 43/44, 89, 94, 109, 112). None of these contracts disclose any separate charge for the eye examination, moderate or otherwise. Moreover, where customers purchased more than one pair of eyeglasses at the same time, obviously involving only one eye examination, the price for each pair is often the same (CX 9 and 21; CX 74, 75 and 76; CX 91, 92 and 94). 1/

1/ Respondent's argument that the cost of the eye examinations was built into the price of the eyeglasses is wholly irrelevant to the way in which consumers will interpret its representations of eyeglasses "from \$7.50 complete."

Consequently, we hold that the fair interpretation of respondent's advertisements, when viewed in their entirety in the context of respondent's overall promotion and its sales practices involving eyeglasses, is that customers would expect to get new eyeglasses at respondent's store for as low as \$7.50 whether they brought an oculist's prescription or had their eyes examined on the premises.

The evidence in the record demonstrates clearly that respondent did not sell eyeglasses for \$7.50 with or without an eye examination. Respondent stipulated that "fewer than 10 pairs of eyeglasses were sold at \$7.50" during which the newspaper ad ran on a weekly basis (Tr. 420). Respondent's stipulation is conclusive evidence that, if there were any sales at \$7.50, the number was insignificant. However, the stipulation does not tell us whether there were in fact any sales made at the \$7.50 price. 1/ Indeed, there is no affirmative evidence in the record that a single sale was made by respondent at the advertised price of \$7.50. Moreover, a tabulation prepared by complaint counsel of respondent's eyeglass prices for a six month period in 1966, projectible for that year as well as 1964 and 1965, shows no eyeglasses sold by respondent even at \$12.50, respondent's advertised price plus its cost for an eye examination. 2/ Quite to the contrary, the tabulation shows that 90% of respondent's eyeglasses were sold for more than \$23.00 and only 1 pair was sold for less than \$17.00

1/ The reason for the stipulation's wording on this point was respondent's assertion that it would have been extremely burdensome to produce evidence of such sales (Tr. 419-20).

2/ Respondent paid his hired optometrist \$5 per eye examination (Tr. 156), and respondent's counsel argued that this cost was built into the price of the eyeglasses (R.B. 24-25). Thus one would expect to find some eyeglass sales for about \$7.50 plus \$5.00 or about \$12.50.

(CX 115). 1/ This tabulation shows 17% of respondent's eyeglass sales were at \$79.50 and 72% at prices in excess of \$39.00. It is obvious that respondent's eyeglass prices are drastically higher than \$7.50. Thus not only did respondent itself admit that over 99% of its 1400 eyeglass sales were made at prices in excess of \$7.50, with or without an optical prescription, but respondent further failed to demonstrate that a single \$7.50 sale was made at any time regardless of any extra charge for an eye examination. 2/

Respondent argued that the evidence fails to support the complaint allegations that it engaged in bait and switch advertising because no evidence was offered that respondent had disparaged the bait product. We disagree.

The essence of the deception involved in an alleged bait and switch practice is that an offer is made which is not bona fide in that the seller has no intention to sell the advertised product at the advertised price but is using the advertisement as a "come-on" in order to sell a higher priced or different product. Disparagement is frequently the technique used by sellers to "switch" the customer. A failure to prove affirmatively that this technique was used in no sense constitutes a failure of proof of the basic illegal practice. Such factors as whether it would have been economically feasible for respondents to make

1/ There is no evidence in the record as to when the newspaper and radio advertising for the \$7.50 eyeglasses was stopped, although counsel for respondent alleged that the program was over by the beginning of 1966 (Tr. 420). On the other hand, he agreed that CX 115 represented "reasonably accurate computations" for the 1964 and 1965 years, during which the ad was admitted to have run regularly (Tr. 316). Even if the \$7.50 advertising had in fact ceased by 1966, we can reasonably conclude that respondent's eyeglass sales during 1964 and 1965 were at substantially similar prices as reflected in CX 115.

2/ The absolute maximum number of sales which respondent could have made at \$7.50 according to its own stipulation is 9, which is 64/100ths of 1% of 1400.

many sales at the advertised price 1/ whether there were in fact a substantial number of sales of the advertised product, 2/ or whether the salesman received commissions on the advertised product 3/ have been relied upon by the Commission in finding illegal bait and switch practices in addition to evidence of disparagement.

The record in the instant case is clear that respondent's advertisements offered eyeglasses at \$7.50 up. The record is also clear that at least 99% of respondent's eyeglass sales were made at prices greatly in excess of \$7.50 and indeed there is no direct evidence that any eyeglasses were sold at the advertised price. Respondent's customers are low-income consumers, many of whom, we can infer, would be anxious to make the cheapest purchases possible. Respondent's challenged advertisement ran every week for at least a year and a half and its eyeglass sales constituted a major segment of its business. We think these facts by themselves raise a strong presumption that either respondent had no eyeglasses available at the advertised price, or that they were so unsuitable to their purpose as to be unpurchasable, or that customers were "switched" to higher priced glasses by some other means.

It is inconceivable to us that a retailer would expend the monies necessary to advertise \$7.50 eyeglasses over a year and a half period and make virtually no sales of the advertised product if he had any bona fide intention at all

1/ Bond Sewing Stores, 51 F.T.C. 470, 477 (1954); Household Sewing Machine Company, 52 F.T.C. 250, 269 (1955).

2/ Lifetime, Inc., 59 F.T.C. 1231, 1253; Midwest Sewing Center, Docket No. 8602 (December 3, 1964).

3/ In the Matter of Consumers Products of America, D. 8679, Final Order and Opinion issued September 7, 1967 (CCH Trade Regulation Reporter Vol. 3, ¶18,059), affd., Consumers Products of America v. Federal Trade Commission, ___ F.2d ___ (3rd Cir., decided September 12, 1968). See esp. fn. 1 and p. 7 of the slip opinion.

to sell glasses at this price. Under such circumstances, the seller must come forward with some evidence to show at a minimum that the advertised product was in its store, freely available to consumers and that they purchased the substantially higher priced goods on the basis of having knowingly made a free choice between the two priced categories of goods. Absent any such evidence we certainly cannot assume that respondent's customers responding to this advertisement, typically people of very limited financial means, were honestly confronted with the choice of \$7.50 glasses or glasses costing many times more and freely and consistently purchased the higher priced glasses and in no single instance that we know of purchased the advertised glasses.

We are of the opinion that respondent's advertisement was not a bona fide offer, that respondent had no intention of selling glasses at this price and took whatever steps were necessary to persuade its customers to fill their eyeglass needs with glasses which cost substantially more than the advertised price and that complaint counsel's failure to show direct affirmative evidence of disparagement in the instant case is in no sense fatal to the allegation.

We conclude, therefore, that respondent has engaged in bait and switch advertising with respect to its eyeglasses in violation of Section 5 of the Federal Trade Commission Act.

(B) The Charge of Misrepresenting
Eyeglass Prices as "Discount"

The complaint also alleges that respondent advertised its eyeglass prices as "discount" prices whereas in fact respondent's prices were higher than the prices charged for comparable merchandise by other retail establishments in

the same trade area. The hearing examiner ignored this allegation. 1/

The evidence respecting the prices charged by respondent for its eyeglasses and the comparable prices which would be charged for the same glasses in the trade area is based on respondent's own invoices and on the expert testimony of Dr. Zachary Ephraim offered by counsel supporting the complaint. 2/ Dr. Ephraim's estimates of trade area prices are based upon his intimate knowledge of the prices charged by members of the Optometric Society, whose members comprise about 52% of the total number of

1/ The examiner did consider the evidence on eyeglass prices in connection with an entirely different complaint allegation--i.e., the charge that respondent's prices generally are unconscionably high. We discuss below these findings of the examiner. However, it is significant that in his analysis of the unconscionability issue the examiner concluded that respondent's eyeglass prices "are well within normally encountered limits" (I.D., p. 14), thus implicitly finding that they were not discount prices.

2/ Although respondent's appeal brief questions the reliability of Dr. Ephraim's testimony on trade area prices, we hold that Dr. Ephraim was extremely well qualified to testify as an expert on this subject. He has been practicing optometry in the District of Columbia for 18 years since graduation from the Columbia University School of Optometry. He is President of the Board of Examiners of Optometry in the District of Columbia which administers examinations to prospective licensees and passes upon their applications. He is also the Vice President of the D. C. Optometric Society (Tr. 227-8, 254).

practicing optometrists in the District. 1/ He explained that the members often discuss the subject of prices at their regular meetings and that their prices generally do not vary more than two or three dollars. Clearly Dr. Ephraim's estimates are reliable evidence of the prevailing trade area prices for the eyeglasses sold by respondent. 2/

Respondent's counsel argues that Dr. Ephraim's estimates of the comparable prices prevailing in the trade area must be adjusted upwards by some \$25-\$30 in order to make them truly comparable to respondent's prices. Respondent's view of these prices as thus adjusted is reflected in Table 5 of its proposed findings and reproduced in the hearing examiner's initial decision as Appendix C.

We have carefully considered Dr. Ephraim's testimony and respondent's arguments with respect to it and have concluded that we cannot rely upon respondent's tabulation to compare accurately respondent's eyeglass prices vis-a-vis the prevailing trade area prices. In our view respondent's purported upward "adjustments" to Dr. Ephraim's price

1/ There are, of course, sources of eyeglasses other than optometrists. Oculists (or ophthalmologists) examine eyes for the purpose of diagnosing diseases as well as prescribing corrective lenses. They generally do not fill prescriptions. Opticians, on the other hand, do not prescribe lenses but only dispense eyeglasses. Thus optometrists are the only ones who both examine the eyes and dispense glasses. Dr. Ephraim estimated that there were nearly twice as many optometrists in the District as oculists (Tr. 228, 254).

2/ Dr. Ephraim stated that the prices charged by Optometric Society members were generally higher than the prices charged by non-members (Tr. 257, 261-2). Thus, if anything Dr. Ephraim's testimony may overstate somewhat the prevailing eyeglass prices in the trade area served by respondent and the Optometric Society members. If his estimates are in fact high, respondent's prices would of course appear lower, by comparison, than they really are.

estimates are unrealistic and not justified by anything which we can find in the record. For example, respondent contends that because Dr. Ephraim's testimony with respect to eyeglass prices charged in the trade area did not include a charge for an eye examination, these trade area prices for eyeglasses should be increased by \$10-\$15 to include examination fees. As we have discussed above, respondent continuously represented its eye examinations to be "free". Nevertheless, in the interest of ensuring comparability, we are willing to allow some adjustment for the eye examination, but this adjustment should be made to respondent's own eyeglass prices so as to subtract from them the amount of \$5.00 which it claims is built into its prices to cover the eye examination cost. 1/

Even a more flagrant error in respondent's tabulation is its upward adjustment for an eye examination on each of several pairs of eyeglasses purchased by the same people on the same day. Obviously one person requires no more than one eye examination on the same day. Respondent duplicated adjustments on each pair of eyeglasses purchased on the same day by Minnie Henry (two pairs) and Roland Taylor (three pairs) (CX 31, 34, 35; CX 21, 27, 28, and 29).

Another major deficiency in respondent's tabulation arises from another "adjustment" in the trade area eyeglass prices which respondent made to reflect what it claims was Dr. Ephraim's testimony that these trade area prices might in fact vary by as much as \$15.00. We do not agree that this is a proper reading of Dr. Ephraim's testimony. Dr. Ephraim testified as to what the prevailing trade area price would be for eyeglasses identical to those sold by

1/ Respondent argued in its brief that its cost for the "free" eye examination ". . . necessarily reflects itself in the price of the eyeglasses to the consumer" (R.B. 25). Its cost was \$5 per examination (Tr. 156). We shall not pursue here, since it is not in issue in this complaint, the possible deception in the use of the word "free" under such conditions.

respondent, and that prices among member optometrists would not vary more than two or three dollars. On cross examination he agreed that there might be extreme ranges, both high and low, to the prevailing prices. With respect to one pair of eyeglasses he made a guess that it was possible that his estimated prevailing price of \$24.00 for this pair of glasses (reflected on CX 35) might vary in extreme cases from \$7.95 on the low side to \$30 on the high side.

By no stretch of the imagination can his testimony on this pair of eyeglasses be read as supporting an across the board upward adjustment of the average trade area price to which he testified by \$15.00. Based on his testimony the upward range from his estimated prevailing price of \$24.00 was \$6.00 (from \$24.00 to \$30.00), not the \$15 upward adjustment urged by respondent. However, respondent did not pursue this line of questions as to the high and low ranges on any other pair in evidence. Thus this particular testimony only involved the extreme range of prices on a single pair of eyeglasses in the record and no uniform, across the board upward adjustments for all eyeglass prices can be justified on this slim basis. 1/ We are satisfied that it is proper to compare respondent's prices (less \$5.00 for the cost of the "free" eye examination) with the average prices generally prevailing in the trade area as was testified to by Dr. Ephraim without making any adjustments--upward or downward--to accommodate the range of prices which individual optometrists might have charged. Dr. Ephraim's testimony is reliable evidence of the prevailing trade area prices, and any "adjustment" to these prices is wholly inappropriate. The tabulation of eyeglass

1/ Respondent's other attempted justification for adding \$15 to the trade area estimates was Dr. Ephraim's guess, when respondent's counsel insisted on an answer, that his own eyeglasses might have an "extreme" price range of \$14 (Tr. 263). However, respondent's counsel did not ask Dr. Ephraim what the "prevailing" price would be on his own glasses, so it is impossible to determine how much of the \$14 range, if any, would be above Dr. Ephraim's estimate of the prevailing price.

prices containing what we find to be the proper adjustments-- i.e., deducting \$5 per customer from New York Jewelry's prices to cover the cost of eye examinations which counsel stated had been built into respondent's eyeglass prices and excluding respondent's \$15 "variation" adjustments--appear herein as Table A. 1/

Table A shows that respondent's eyeglass prices are far from being "discount". In fact, they average 202% of, or about twice as high as, the trade area prices. It is clear on this evidence that respondent's eyeglass prices were substantially above the trade area retail price of comparable eyeglasses. We cannot refrain from pointing out, however, that even if respondent's tabulation were accepted, it would still demonstrate the falsity of respondent's advertising since it shows respondent's prices to be comparable to those charged in the trade area, not discount or bargain prices. Thus even were we to accept respondent's version of the prevailing trade area prices, which we do not, we would reach the same conclusion about the falsity of respondent's representation of its eyeglass prices as discount.

We conclude that respondent's consistent and emphatic advertising of its eyeglass prices as "bargain" and "discount" was false, misleading and deceptive in violation of Section 5, and that these complaint allegations are fully sustained by the record.

1/ The double and triple adjustments which respondent made for eye examinations in the cases of Minnie Henry and Roland Taylor have been corrected by deducting one half and one third (respectively) of the cost for a single eye examination over each pair of eyeglasses purchased by them at one time.

2. Respondent's Failure to Disclose
Its Credit Terms

PARAGRAPH SEVEN (2) and PARAGRAPH EIGHT (3) of the complaint contain the allegation that respondent has misrepresented its credit policies and otherwise dealt unfairly with low-income members of the public by failing to inform prospective purchasers fully and adequately of all of the credit charges or finance fees imposed and in some cases failing to disclose the total price to be paid under the conditional sales contract or other credit instrument.

The hearing examiner concluded with respect to the disclosure allegations that "New York Jewelry has attempted to make the fullest and most adequate disclosure of both the total price to be paid, and the carrying charges imposed on credit sales" (I.D., p. 14). He further concluded, without citing any record evidence in support, that the respondent made changes in his conditional sales contracts "in an effort to impose carrying charges which could be readily disclosed to, and understood by, its customers". In addition to these factual determinations the examiner stated as a matter of law that the Commission lacks jurisdiction over credit practices (I.D. 15). We believe that the examiner's statement of the law is erroneous in this regard and our examination of the record compels the conclusion that the examiner's findings of fact are also in error.

Respondent utilized three different retail installment credit contract forms during the period from December of 1964 up to the date of the complaint in September of 1966 (referred to in this opinion as forms "A", "B", and "C"). 1/

1/ Examples of form "A" are CX 17, 27, 38, 19 and 21 (contracts 1-5 on the attached TABLE B); examples of form "C" are CX 69, 47, 48 and 66 (contracts 23-26 in the attached TABLE B); all the other conditional sale contracts in the record are examples of form "B" (contracts 6-22 in the attached TABLE B). (continued on next page)

According to the preprinted provisions on these contracts, each form involves a different rate of finance charge to be imposed on the installment credit transaction. For example, the printed portion of the form "A" contract calls for an interest rate of 1/2% per month on the unpaid balance plus a service charge of 3% compounded monthly. Finance charges on transactions recorded on form "A" contracts, therefore, would total about 42% a year stated in terms of simple annual interest. The contract, however, does not disclose this annual interest rate. On the other hand, respondent's form "B" contract in its printed provisions does not disclose any percentage interest rate or carrying charges during the term of the contract either as a monthly or annual rate (but there is space for a dollar amount to be filled in). The only percentage rate disclosed is provision for a 1 1/2% monthly carrying charge after maturity and in addition "the highest legal rate of

(1/ cont.)

Respondent's counsel presented a chronological tabulation of all the installment contracts in the record (Table 1 of respondent's brief incorporated by the hearing examiner as Appendix B in the initial decision). This tabulation, with only one exception, shows that form "A" contracts were in use until December of 1965, that form "B" contracts were used during the period from December 1965 to May 1966, and that form "C" contracts were used from July 1966 to September 1966, the last date of respondent's installment contracts offered into evidence in this record.

One contract appears to be out of place in this tabulation. This conditional sales contract, CX 17, is a form "A" contract showing the sale of undisclosed merchandise to Mary Daughtry and bears a date according to respondent's table of December 26, 1965. It is interesting to note, however, that the cash register imprint on the side of CX 17 clearly discloses the date of December 26, 1964. Thus, it appears that CX 17 should have actually been placed at the top of respondent's tabulation and that form "A" was used for at least one year, from December of 1964 till December of 1965.

interest." Form "C" contracts provide a third method of levying finance charges. The pre-printed provisions in these "C" contracts state that a flat 1 1/2% monthly carrying charge will be levied on the unpaid balance with no indication as to how much money this will be, or who decides how it is to be computed.

In addition to these installment credit form contracts, respondent maintains a ledger card for each account on which payment is recorded. 1/ So far as the record discloses, the same form of ledger card was used regardless of the form of installment credit contract. The ledger card recites that there is a monthly carrying charge of 1 1/2% on the unpaid balance. Thus respondent's ledger card is inconsistent on its face with the printed terms of form contracts "A" and "B" insofar as the amount of finance charge imposed is concerned.

In addition to the installment contract and the ledger card, respondent also used a "payment card", or booklet, which the customer retained to keep track of his payments. 2/ This payment card recites on front and reverse sides "Interest 1/2% per month, Carrying Charge 3% per month. No Interest or Carrying Charge if Paid within 30 days." The side of this payment card which shows the payments also bears an additional legend (which appears to be stamped on it) to the effect that balances remaining unpaid after one year are "subject to a carrying charge of 1 1/2% on the unpaid balance." The record does not explain the apparent inconsistencies in the payment card provisions respecting interest and carrying charges nor whether they should be interpreted to mean the finance charges are increased or decreased after one year, or any rationale for doing either. The record is equally void of any attempt to resolve the obviously conflicting provisions among the

1/ Tr. 181-2, 307, CX 70.

2/ Tr. 307, CX 24 and 25.

printed contract forms, the ledger cards, and the payment cards. Nor do these credit instruments offer any explanation on their face as to which governed the amount of finance charges actually imposed on respondent's customers. Clearly, whatever respondent's practice may have in fact been with respect to calculating the amount of finance charges imposed on any particular sale, its customers had no way of knowing whether their interest payments were based on the payment cards or on their installment contracts.

Even if respondent's customers could have assumed that the printed provisions of their installment contract governed the rate of finance charges they would have to pay, we find that these contracts are by themselves in fact highly misleading as to the actual interest rates charged by respondent. We have undertaken to compute the simple annual percentage rate of the finance charges which respondent added to its "cash prices" for all of those contracts which contain sufficient information to do so. These appear in the attached Table B. 1/

1/ All of the installment credit contracts in the record appear in Table B. The annual interest rates shown therein were computed using a relatively simple formula (called the "constant-ratio" method) which gives a very close approximation of the true annual rate by taking into account the duration of the credit arrangement: $i = \frac{2 m D}{P (n+1)}$ where i

equals the annual finance fee, m equals the number of payment periods in a year, D the finance charge in dollars, P the principal in dollars, and n the number of payments to discharge the debt. See, e.g., Neifeld, M. R., Neifeld's Guide to Installment Computations, Mack Publishing Co. (1951), ch. XI; and Board of Governors of the Federal Reserve System, Consumer Installment Credit, pt. I. vol. 1 (1957), p. 54. A computation was not possible for several of these contracts because they failed to disclose one or more critical factors such as the cash price (i.e., the "principal") or the dollar amount of the finance charges actually imposed by respondent.

Although the initial decision contains a tabulation of the contract forms, neither the examiner nor counsel bothered to compute the simple annual percentage rate of finance charges actually imposed by respondent, as we have done in Table B. Our tabulation clearly shows that regardless of the printed provisions of these various contract forms respondent in fact had no consistent, identifiable pattern of interest or finance charges which it imposed on its customers, contrary to its allegations (R.B. 9-14).

When one reviews the actual percentage rates which respondent has charged its customers, the examiner's conclusion that respondent has been consistent and has been trying to make meaningful disclosures to its customers is ludicrous. For example, four specific contracts which the examiner analyzed as carrying an annual interest rate of 18% in fact carried annual interest rates of 53%, 67%, 47% and 124%, respectively, when the time over which repayment was due under each contract is taken into account as it must be (Table B, contracts 6, 9, 7, and 8, respectively). 1/

Other executed contracts in the record tabulated in Table B further illustrate that respondent in fact charged its customers widely varying and completely unpredictable rates of interest. Contracts 10-13 in Table B show no extra charge added to the "cash price". Thus the interest rate or finance charge on these contracts was ostensibly zero. On the other hand, respondent charged one customer (Synithia Washington) an effective annual rate of 47% on one contract (CX 42) and on the same day charged the same customer an annual rate of 124% on another contract

1/ The examiner stated:

"This contract form does not disclose the rate of carrying charge, but an inspection of the four contracts involved (CX 22, 31, 42, 43, 44) reveals that the carrying charge percentage is approximately 18 per cent. This is roughly equivalent, on an annualized basis, to the 1 1/2 per cent per month commonly charged by most retail establishments since 1 1/2 per cent per month x 12 months equals 18 per cent" (I.D. 11).

(CX 43/44). 1/

Further examples of respondent's hodgepodge of interest rates were involved in contracts numbered 14-22 on the attached Table B. Respondent alleged that during the period covered by these contracts it utilized a pre-computed chart or table which took into account the amount financed and the duration of the credit, and amounted to approximately 1% per month (R.B. 12). However, as Table B shows, the finance charges appearing on contracts 14-22, calculated as a simple annual percentage, varied between 15% and 45% (except number 19 for which no computation was possible). Obviously, respondent's allegations as well as the examiner's findings that respondent was in fact using a logical and consistent method of levying finance charges during each period covered by the various contract forms fall apart in the face of Table B. This conglomeration of effective annual finance rates charged by respondent over the 21 months covered by the contracts defies the possibility that respondent had any kind of orderly or systematic procedure for imposing finance charges.

It is no wonder that the general manager of New York Jewelry for 25 years was unable to explain on the witness stand what procedure for imposing finance charges had been followed by respondent at various periods of time. Often he could not explain how finance charges were computed even when looking at a copy of the conditional sale contract involved (Tr. 189-91, 202, 302-5). Mr. Ullman tried to explain a variety of methods utilized by New York Jewelry for computing finance fees from time to time, but none of

1/ Another intriguing observation is that CX 48, a conditional sales contract for Johnnie Johnson, includes a "balance of existing account" of \$118.75 which is the face amount of the conditional sale contract, CX 47, executed the same day by Johnnie Johnson. Thus, presumably, CX 48 was intended to supersede and nullify CX 47, but both of these contracts were retained by respondent in its files and presumably both were in effect and could be at least prima facie evidence of dual liability by Mr. Johnson.

these methods coincided with the computation provided for in the printed portions of the form "A" contracts nor did they appear to be consistent with the printed financing provision of the ledger card formula.

There are other deficiencies in respondent's use of these installment contract forms which further compound their misleading effect on respondent's customers. While the form "A" contracts have spaces permitting the filling in of total price to be paid as well as the amount and interval of each installment payment, in all but one of the executed form "A" contracts in the record, these spaces have never been filled in to show the repayment schedule. Moreover, there is no provision on these form "A" contracts for disclosing the amount of interest or service charge in dollars. The form "B" contracts, unlike form "A", do have spaces which can be filled in to reflect in dollars the "Total Cash Price," "Carrying Charge" and "Time Price," but (as already noted) no provision for including the percentage rate of the finance fees during the term of the contract either on a monthly or an annual basis. Moreover, many of the spaces in which information was supposed to be filled in were left blank by respondent on "B" contracts also. 1/

1/ For example, CX 43, a Form B contract, described by respondent as one of Synithia G. Washington's contracts is unsigned without even any identification of the purchaser's name. CX 17, a Form A contract purported to have been executed by Mary Daughtry, is completely blank except for the customer's signature. Although Form B contracts contained spaces in which to fill in the carrying charges, these spaces in several executed contracts were left blank (CX 74, 94, 99) presumably meaning that no extra finance charges were levied. One of the customers who executed one of the Form B contracts containing blank spaces for total cash price, carrying charges and time price testified that he did not know how much the watch cost him until after he made the down payment (CX 1, Tr. 102-117). Since this amount was filled in on the contract appearing in the record, the inference is that this contract was filled in after the sale was made and with no discussion with the purchaser

(continued on next page)

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Respondent's brief suggests (at 12-14) that wholly aside from the deceptions involved in many of the contracts appearing in the record, its most recent contracts, designated as form "C" contracts, are quite clear and free from deception. 1/ We reject any suggestion that respondent's latest practices would excuse its previous ones. More importantly, however, we vigorously disagree with counsel's evaluation of these most recent contracts and find that they too are deceptive. The finance charges imposed by these contracts are expressed solely in terms of a "carrying charge of 1 1/2% per month on the unpaid balance, compounded." It is difficult indeed to imagine how this "disclosure" is interpreted by the average consumer, to say nothing of respondent's particularly unsophisticated customers. 1 1/2% would undoubtedly be considered quite "easy" by many such customers, as respondent's advertising has assured them. There is no attempt to disclose that this percentage would be 18% on an annual basis, how much the finance charge would be in dollars, or even what the customer's total obligation is. Respondent's counsel cites the provision in the contract, "Time price: Cash price plus carrying charge of 1 1/2% per month, compounded." He attempts to rationalize the failure to state the total contract price in dollars by arguing that it can vary, depending upon how quickly the customer repays the obligation. What he neglects to mention is the fact that

(1/ cont.) until his down payment had been received sealing the bargain. On several of the contracts the blanks intended for the amount and interval of installment payments have not been filled in on the contract itself or on the accompanying promissory note at the bottom of the contract (CX 17, 21, 37, 38). On two others, although the installment blanks are filled in on the contract, they are not filled in on the accompanying promissory note at the bottom of the contract (CX 94, 105). On yet another, the installment provisions on the contract are inconsistent with the installment payment provisions of the accompanying note (CX 89).

1/ The contracts involved here, designated as form "C", appear in the record as CX 47, 48, 66, and 69.

the contract (and also the accompanying promissory note) calls for specific installment payments at specific intervals. Thus the precise dollar amount of the finance charges as well as the customer's total obligation could very easily be computed by respondent and disclosed to the customer before he decides whether to execute the contract. Respondent obviously prefers to rely upon its customer's inability to compute "1 1/2% per month, compounded" and to assure them simply that the credit is "easy." 1/

We hold that respondent's installment credit sales practices have the capacity to and do in fact mislead. Even the best of respondent's contracts represent simply that a "carrying charge" of "1 1/2% per month" will be levied, but this charge is not computed, so the customer does not know how much the extra charge will be, nor can he verify whether respondent is in fact charging him 1 1/2% per month. These contracts also fail to state the interest rate as a simple annual percentage or even the customer's total obligation. Moreover, many of the earlier contracts were wholly silent on, or actually misrepresented, the percentage rate of the finance charges levied.

In view of the inconsistency between respondent's payment cards, ledger cards, and various contract forms; the great disparity among the effective annual interest rates charged by respondent to various customers (including disparity charged to some of the same customers); the failure by respondent to provide all of the information called for in the contract forms which it did use; and the failure to disclose the annual interest rate, the amount of finance charges, or even the customer's total contractual obligation in its most recent contracts, we find that

1/ A question left unanswered in this record is the time, place and method of computation of the 1 1/2% per month. Apparently, the customer is entirely at the mercy of one of respondent's personnel, who happens to take the customer's installment payment, to tell him how much more he owes.

respondent's installment credit practices have the capacity to and do in fact deceive purchasers as to the actual cost of the credit and their total contractual obligation.

As noted previously, the hearing examiner asserted that the Commission "does not have jurisdiction to regulate. . . credit practices in the marketplace" (I.D., p. 14). The hearing examiner is grossly in error. The Commission has jurisdiction under Section 5 over unfair or deceptive acts and practices in commerce, and no exception is made in the Federal Trade Commission Act or any other Act of Congress for acts and practices involving credit. Indeed the Commission has been actively enforcing Section 5 in the field of credit transactions for decades. ^{1/} Even respondent in its brief does not urge any other contention. It confines its argument to the Commission's remedial powers in this field which we will deal with below in our consideration of the order to be entered against this respondent.

Accordingly, we conclude that respondent's failure to adequately inform his credit customers of all the credit charges and financing fees imposed on them, and failure in

^{1/} General Motors Corp., 30 FTC 34 (1939), aff'd 114 F.2d 33 (2nd Cir. 1940); Ford Motor Co., 30 FTC 49 (1939), aff'd 120 F.2d 175 (4th Cir. 1941); identical complaints and stipulations were involved in Dkt. 3000, 3002, 3003, 3006 and 3007, 24 FTC 1394-1401. The Commission in 1951 issued a Trade Practice Conference Rule Relating to the Sale and Financing of Motor Vehicles (16 C.F.R. §197). Consent orders involving credit representations include Lester Carr, 55 FTC 1406 (1959); Bob Wilson, Inc., 57 FTC 1213 (1960); Audiographic Potomac, 59 FTC 1201 (1961); and Custom Sleep Shoppes, Ltd., Dkt. 8709 (1967). Empecor Corp., Dkt. 8702 (Feb. 24, 1967) involved stipulated facts and order; and Allied Enterprizes, Inc., Dkt. 8722 (April 11, 1967) involved an order entered by default when respondent failed to contest the complaint. A recently litigated case involving credit representations is Consolidated Mortgage, Dkt. 8723 (Feb. 19, 1968).

many instances to disclose the total price to be paid pursuant to conditional sale contracts, as alleged in the complaint (PAR. SEVEN (2) and EIGHT (3)), is fully sustained by the evidence and constitutes unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act.

3. Respondent's Promises of "Easy Credit"
and Charging Unconscionably High Prices

Respondent reiterates in its brief at several different places that the complaint allegations are not models of precision and that it is necessary to read them carefully to determine exactly what is being alleged (e.g., R.B. 2, 3, 18). Respondent then proceeds to interpret the allegations in paragraphs 7 and 8 as containing a "key" allegation, to wit, that respondent's prices are unconscionably high, which it believes is the "main thrust" of the Commission's case (R.B. 18). The hearing examiner adopted respondent's reasoning, found that respondent's prices were not proven to be unconscionably high, and therefore dismissed all of the related allegations.

Irrespective of whether or not the complaint is a model of clarity, respondent cannot on that purported ground pick and choose among its charges and redraft the allegations to suit its own arguments.

Thus we do not agree with the hearing examiner or with respondent that the sole or primary charge in these paragraphs is that respondent's prices are unconscionably high.

As we read these paragraphs they contain a number of interrelated allegations dealing with several aspects of one basic problem--the deceptive use of credit--and specifying two respects in which respondent's credit is not "easy"--because its cash prices are unconscionably high or greatly in excess of other prices in the trade area; and because

respondent, after giving the appearance of dealing quite leniently with credit customers, rigidly enforces its credit rights against customers who have been lured into their contractual arrangements by respondent's "easy credit" marketing practices.

Thus PARAGRAPH SEVEN (1) of the complaint alleges that respondent utilizes a number of devices to lure customers into the store so it can sell them "eyeglasses or other merchandise on the so-called 'easy credit terms'." PARAGRAPH SEVEN (2) alleges:

"Without determining his customers' financial ability to pay or their credit rating respondent sells merchandise to them on 'easy credit terms' at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash."

PARAGRAPH EIGHT (1) alleges that respondent through various means induces its customers

". . . to purchase merchandise on credit terms that, contrary to respondent's representations, are not easy because of the fact that the prices charged by respondent for such merchandise are unconscionably high and greatly in excess of the reasonable or fair market value of such merchandise."

This paragraph also alleges:

"Respondent extends credit to such customers without determining their credit rating or their financial ability to meet their payments. As a result many of such customers are unable to make their credit payments whereupon respondent seeks, and often with success, to obtain garnishments against their wages."

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PARAGRAPH EIGHT (2) alleges that respondent's ticketed prices include undisclosed credit charges and are greatly in excess of prices charged by others.

It is essential in evaluating respondent's "easy credit" representations in terms of these complaint allegations to consider first their impact on the consumers to whom they are directed. Respondent's customers are drawn largely from the low-income strata whose marketing sophistication and knowhow are minimal, who by and large must purchase on credit and who have difficulty in obtaining credit elsewhere. 1/ To such low-income consumers, therefore, the price of merchandise is translated in terms of credit. The price which attracts them is not the "cash" price. They lack the experience of critically comparing retailers' cash prices, since they cannot pay cash in most instances anyway, and many probably assume that there is not a great deal of difference among the cash prices charged by various retailers in the same general locality. 2/

Respondent's customers are, therefore, obviously more sensitive to the size of the required downpayment and weekly or monthly payments than to the cash price. Respondent's low downpayments and, on occasion, its practice of requesting no downpayment at all, tends to reinforce the impression in its customers' minds that its credit terms are "easy" as represented. This impression is further reinforced by the low individual installment payments which

1/ See, for example, the profiles of a number of customers appearing in the attached Appendix A.

2/ Because of the type of merchandise carried by respondent it would have been extremely difficult for its customers to compare respondent's prices on many of the items it handled. Even the general manager testified that once he removed the manufacturer's tickets from Bulova watches he could not tell one Bulova watch from another (Tr. 331). Obviously, the comparative quality of such items as jewelry, watches, eyeglasses and used TV's are also very difficult for even the sophisticated consumer to evaluate with any degree of precision.

are required on some occasions, the printed interest charges shown on the contracts which appear to range between 1 1/2 and 3%, or are stated as \$1.00, and in some cases, the apparent absence of any finance charges being imposed at all.

An integral part of respondent's "easy credit" representations and its purported low interest charges and downpayments is its further representations that it is a "bargain" store and that "Mr. Tash" is truly the friend of the poor. "Credit in a Flash, says Mr. Tash" is the headline of respondent's newspaper ads. And "Mr. Tash" reassured radio listeners that he would give them the "good things in life" at bargain prices and on "easy credit." The sincerity of such promises could hardly be questioned when one approached the store and was offered a "free gift", a "free eye examination", and told that Mr. Tash thinks he has "a preferred credit rating" even though other stores have turned him down. If anyone wondered why New York Jewelry, a "bargain" store, would extend such liberal credit terms, "Mr. Tash" explained that it was "Because We Appreciate Your Business" (CX 123) and told radio listeners, "I'll take a chance on you" (CX 52, 54).

Thus, respondent clearly conveys the impression not only that credit is available, but also that it is offering these generous terms because it "appreciates" the poor man's business and is willing to "take a chance" on his credit. In this context, many consumers would never be alert to the possibility that respondent's "easy credit" meant only that merchandise was available for low installment payments, and that in fact the credit might be costing them dearly because of excessively high prices of the merchandise itself. Indeed, respondent's advertising tended to counter any such suspicion from arising in its customers' minds through its claims to being a bargain and discount store.

Representations of easy credit to anyone, and particularly to persons who are dependent on the extension of credit in order to make any purchases at all, do not

mean simply that the seller is representing that he will permit customers to make a purchase of merchandise without having to pay cash. It means much more. At a minimum, it means that customers purchasing at respondent's store will be given a substantial period of time within which to pay for the merchandise, that the individual payments will be low, that the charge imposed for this credit will be reasonable, and that the consumer will be fairly dealt with on all terms of the transaction including the consequences of a delayed or missed payment. When coupled, as here, with express and implied representations with respect to respondent's bargain operations, ^{1/} the promise of the "good things in life" and "free gifts", we think such representations will be interpreted by the consumer as meaning that all of respondent's terms, including the total time price of the merchandise being purchased, are more favorable than the consumer could get in most other retail outlets.

Consumers faced with respondent's offers of easy credit will assume--and we believe reasonably so--that the "cash price" of respondent's merchandise is a "bargain", or at least that it bears a reasonable relationship to the value of the article and is not substantially higher than prices generally prevailing in the trade area for the product. It is against these impressions, conveyed by respondent to its customers through its promotional and other merchandising techniques, that we must view respondent's actual pricing and installment credit practices.

(A) Respondent's Pricing Practices

The record indicates that respondent consistently followed a pricing practice of inflating its ticketed retail prices of a substantial number of lines of its merchandise substantially above the trade area prices for such merchandise.

^{1/} See, for example, respondent's radio commercial CX 56 and newspaper advertisement CX 114 (Appendix B attached).

We have already discussed respondent's misrepresentation of its eyeglass prices as discount. Table A reflecting our conclusions respecting New York Jewelry's eyeglass prices, even after deducting the cost of the "free" eye examination, demonstrates that respondent's eyeglass prices were at least twice as high as the prevailing trade area prices.

The record also shows that respondent followed a similar markup practice on the Bulova watches which it sold. Respondent's general manager admitted that Bulova's tickets, containing a suggested retail price, are removed by respondent before putting the watches on display and are replaced with its own tickets bearing prices which are higher than those suggested by the manufacturer (Tr. 332-5). 1/ Other evidence in the record suggests that respondent's ticketed prices for Bulova watches represented markups averaging 700% in contrast to the trade area markup of approximately 100%. 2/ For example, one invoice in the record covering 8 different models of Bulova watches which had cost respondent from \$16 to \$28 indicates sales prices fixed

1/ Based upon the watch invoices in the record, Bulova watches are respondent's primary line of "higher" priced watches--i.e., those with invoice costs over \$15.00. RX 1-10 and CX 58 reflect purchases by respondent of 77 Bulova watches from November, 1965, to April, 1966.

2/ The cost to respondent of Bulova watches is undoubtedly no less than to major retailers in the area. These costs appear in numerous record invoices reflecting respondent's purchases of Bulova watches from the manufacturer (CX 58, RX 1-10). Stipulated testimony (CX 13, 14, and 15) establishes the selling prices of major jewelry retailers in the area for a number of the identical watches handled by respondent. These are tabulated in Appendix II of complaint counsel's brief and show the trade area markups to average about 100% over cost.

by respondent on these items ranging from \$125 to \$149.50
(CX 58). 1/

Following is a retyped version of an invoice (CX 58) showing respondent's cost and ticketed selling prices (in handwritten notations) for a number of Bulova watches:

Quan.	Style	Description	Hand- Written Cost Code	Hand- Written Prices	Unit Cost	Total
1	03909 Y	Engineer K	IDME	\$149.50	24.95	24.95
4	13220 Y	Craftsman AA	CLME	125.00	15.95	63.80
3	13221 Y	Centennial	CLME	125.00	17.95	53.85
2	13441 Y	Yankee Clipper G	ILME	149.50	27.95	55.90
5	63378 Y	Miss America M	CLME	125.00	17.95	89.75
2	63379 W	Miss America N	CLME	125.00	17.95	35.90
1	63421 W	Concerto N	CPME	125.00	16.95	16.95
1	73216 Y	Flight Nurse E	CUME	125.00	18.95	18.95

1/ The evidence as to respondent's ticketed selling prices for these Bulova watches was based on handwritten notations, one of a letter code and the other of prices, appearing between the listing of each watch model and the unit and total price paid by respondent. Respondent's general manager (Mr. Ullman) claimed that he did not know whether these handwritten notations represented the selling prices. Yet he admitted that the handwritten letters next to each type of watch listed on the invoice accurately translated (with the exception of one digit in the second item) the cost to respondent of each watch into the letter code used by New York Jewelry (Tr. 161-62, 169, 330-36). These two handwritten items, the cost code and the selling price, are the precise items that respondent writes on the price ticket, attached to each piece of merchandise in the store. Accordingly, we are convinced and so find that these handwritten notations on CX 58 reflected respondent's ticketed sales price for these watches. Moreover, complaint counsel testified that Mr. Ullman told him during the investigation that the handwritten prices appearing on this invoice (and also on two other invoices, CX 57 and 59) represented New York Jewelry's retail selling prices for these items (Tr. 636).

The trade area prices for these same items ranged from \$36 to \$60, or a markup of about 100% in contrast to respondent's markup averaging around 700% (CX 13, 14, 15). 1/

While the evidence is not quite so clearcut, the record indicates that similar high markup policies were followed with respect to respondent's other merchandise. For example, stipulated testimony reveals the sale by respondent of a "Lord Tash" watch (apparently named after the respondent Leon Tashof) for \$89.95. 2/ While the cost to respondent of this particular watch was not established, all of the non-Bulova watch invoices in the record, covering respondent's purchases of 164 watches over a nine month period, show that respondent paid less than \$13 for all but 11 of these watches (the most expensive one costing \$17.95). 3/ Moreover, since "Lord Tash" was respondent's housebrand, it is likely that it was among the lower-costing watches represented by these invoices and therefore also sold at a similarly high markup. Respondent offered no evidence indicating that the pricing of this non-Bulova watch was in some way atypical.

1/ Another instance which would bear out these high markup policies of respondent with respect to its Bulova watches involved a Bulova watch sold by respondent to a customer, Roland Taylor, for \$295.00 (CX 9). The watch itself could not be located, and so its cost could not be clearly established. However, the record does contain evidence that the watch was pawned three months after purchase for \$10. Moreover, the invoices in the record showing respondent's purchases of 77 Bulova watches over a five month period (Nov. 1965 to April 1966) reveal that the highest price paid by respondent for any Bulova watch which it had purchased in this period was \$39.95 suggesting that the \$295 Bulova watch represented a probable markup of around 700% (CX 58, RX 1-10).

2/ CX 4, CX 19.

3/ CX 60, RX 12, 13, 16-20.

The evidence also suggests that similar high markups were placed by respondent on a variety of other items sold by it encompassing cookware, toasters, irons, clock radios and stereos. While respondent disputes the evidence of the prices at which it sold these items, it does not contest the evidence respecting its costs on the cookware and toaster items which ranged from \$4.99 to \$7.97. The evidence of its sales prices for these items, based on handwritten price notations appearing on respondent's invoices, indicate that these sales prices ranged from \$24.75 to \$79.50 (CX 57). Its cost for its clock radios and stereos ranged from \$18.05 to \$78.25. Again based on similar handwritten price notations, its selling price for these same items ranged from \$89.50 to \$295.00 (CX 59). In both of these cases respondent's general manager claimed not to know whether the handwritten notations represented respondent's ticketed selling prices. It is curious to say the least, however, that respondent's general manager could offer no opinion whatever as to what the selling prices were, when he himself is responsible for establishing respondent's prices. Even with the invoices in hand showing the cost of each item, the general manager claimed not to be able to testify as to the selling prices of any of the items listed on any of these invoices, CX 57, 58, or 59 (Tr. 169-173). Under such circumstances his alleged inability to confirm that the handwritten notations did in fact represent selling prices is of little consequence. The inference that these were selling prices is certainly enhanced by respondent's complete failure to offer any contradictory evidence whatsoever.

We find that with respect to respondent's eyeglasses and Bulova watches, its prices for these products greatly exceeded the prices charged for like or similar merchandise by other retail establishments in the same trade area. We find that with respect to respondent's prices on its Lord Tash line of watches, and on its cookware, toaster, clock radio and stereo items the evidence supports the same conclusion but

we are regarding this latter evidence as of only cumulative significance. 1/

In determining whether these practices constitute unfair and deceptive acts within the meaning of the Federal Trade Commission Act, we must start with the premise that our responsibilities in administering Section 5 of the Federal Trade Commission Act are to protect the most credulous, gullible and unsuspecting customers, FTC v. Standard Education Society, 302 U.S. 112 (1937); Progress Tailoring Co. v. FTC, 153 F.2d 103 (7th Cir. 1940); Doherty, Clifford, Steers & Shenfield v. FTC, 392 F.2d 921 (6th Cir. 1968).

Markups of the magnitude fixed by respondent have been held unconscionable in cases involving not dissimilar

1/ The complaint cited as a specific example of extremely high markups, transistor radios costing respondent \$3.45 and bearing price tickets of \$59.50, and others costing \$2.70 bearing price tickets of \$49.50 (Complaint, PARAGRAPH SEVEN (2), CX 122, Tr. 637, 595). Respondent did not deny that these radios bore such price tickets, but argued that the high prices must have resulted from a clerical error in misplacing a decimal point. It introduced invoices allegedly representing the sales of the great majority of its transistor radios to show that none of them actually sold for \$49.50 or \$59.50. Yet according to respondent's own tabulation, there were no sales of transistor radios at \$4.95 which presumably would be the intended selling price if, as it argued, the \$49.50 price really resulted from the misplacement of a decimal point on the \$49.50 price ticket. However, the evidence is at best equivocal and we refrain from making any specific findings on this issue since in our view a resolution of this factual issue is not material to our findings in this case.

consumer household items. 1/ And we have no doubt that the use of unconscionable selling prices can, by itself, constitute an "unfair" or "deceptive" practice, or an "unfair method of competition" in violation of Section 5 of the Federal Trade Commission Act. In the instant case, however, we are not confronted simply with a retailer's practice of selling goods at high markups--rather we have here a respondent who promises people "easy credit" and induces them to sign credit contracts because it is so "easy" to take the merchandise--little or no downpayment being required and the payments being low--while at the same time charging prices which are greatly in excess of what other retailers charge, knowing that such customers are unaware of this fact. Obviously under these circumstances, the credit is not "easy" to respondent's customers, as represented. To the contrary, it is in fact costing them dearly since the overall amount of money which they must pay respondent for its eyeglasses, for example, is twice as much as other optometrists charge and for its watches many times as much as these could be purchased in the general market. Add to this the bewildering variety of finance charges imposed by respondent on its various credit transactions ranging from zero percent to 142% and it is clear that respondent's customers are not receiving easy credit.

It is not necessary for us to conclude that on the basis of some absolute scale, respondent's prices were unconscionably high. On items representing a substantial

1/ For example, see Frostifresh Corporation v. Reynoso, 274 N.Y.S. 2d 757 (1966) [rev'd. for trial to determine damages, 281 N.Y.S. 2d 965 (1967)] where total credit price of \$1145 was unconscionable for a refrigerator-freezer costing the seller \$348; American Home Improvement v. Mac Iver, 201 A. 2d 886 (1964) where a credit price of \$2568 for goods and services valued at \$959 was unconscionable; State by Lefkowitz v. I.T.M., 275 N.Y.S. 2d 303 (1966) where prices from two to six times cost were unconscionable.

part of its business, its prices were in excess of the prices prevailing in the trade area. To customers who are told that by patronizing respondent they will get easy credit, we hold that these markup policies together with the other credit terms imposed on respondent's customers are unfair and deceptive. Representing "easy credit" while at the same time promising discount and bargain prices, but in fact charging prices which substantially exceed the trade area price is obviously deceptive. We conclude, therefore, that respondent has deceived his customers and dealt unfairly with them, through its use of "easy credit" advertising and its markup and other promotion practices. When the entire format of respondent's business is considered, it is clear that it is attracting customers who cannot obtain credit elsewhere by the two pronged, doubly deceptive gimmick of "discount" prices and "easy" credit. As utilized by this respondent, both practices are deceptive and are in violation of Section 5 of the Federal Trade Commission Act.

(B) Respondent's Collection Policies

The complaint also alleges that respondent takes unfair advantage of its customers by extending credit to purchasers without determining their financial ability to pay and thereafter suing the customers who do not meet their credit obligations, often obtaining garnishments on their wages.

The evidence is clear that respondent's credit eligibility policies are exceedingly liberal. ^{1/} Respondent's newspaper ads (all with the headline "Credit in a Flash, says Mr. Tash"), radio commercials, and free gift credit cards (which were both mailed to customers and given to passers-by on the sidewalk) hammer away at the theme that New York Jewelry extends credit to everyone, "Even if

^{1/} The testimony of the credit expert, Mr. Edward Garretson, appears in the record at Tr. 443-471, and the credit applications appearing in the record are CX 2, 16, 18, 20, 30, 36, 41, 46, 61, 64, and 65.

you never had credit, lost your credit, or others have turned you down" (CX 123). It is in fact rather astonishing that respondent alleged, albeit meagerly, that it did not extend credit indiscriminately. This is astonishing not just because it was not supported with any facts (not even evidence of a single credit rejection), but primarily because this argument contradicts virtually all of respondent's own advertising.

The evidence is also clear that respondent follows a rigorous collection policy. The record contains stipulated evidence that during 1964, for example, New York Jewelry filed 1178 law suits against defaulting customers. In 1965 respondent filed 1631 such law suits and in 1966, 707. 1/ As for garnishment proceedings, it was stipulated that during the 14 month period January 1966 through February 1967 New York Jewelry filed 411 garnishment proceedings. For purposes of comparison, it was further stipulated that the C & P Telephone Company during the same 14 month period had only 91 garnishment proceedings, the Hecht Company 217, Kay Jewelers (with 10 branch stores in the Washington area) 202, and Reliable Stores Corporation 305. 2/ All of these stores undoubtedly had many times more customers than the respondent's 5000. 3/

Some appreciation of the percentage of customers who have been sued by New York Jewelry can be obtained by looking at the approximate number of accounts and the number of law suits filed. As mentioned, about 5000 accounts were utilized during 1966. During that year 700 suits were filed, or about 14% of the customers were sued. It is interesting to note, however, that the year prior, when 1631 suits were filed, the percentage was undoubtedly much higher. Even assuming that there were as many accounts utilized in 1965 as in 1966,

1/ Tr. 483-488.

2/ Tr. 485.

3/ Tr. 520.

1600 law suits for 5000 accounts indicates that 32% of the customers were sued. In other words, during 1965, New York Jewelry sued about every third customer.

At first blush these allegations in the complaint respecting respondent's eligibility and collection practices might appear to rest on a premise that it is illegal or somehow wrong or unfair for a retailer to adopt a generous policy with respect to the extension of credit. We reject any such premise. To even suggest the validity of such a premise would carry particularly harsh overtones for our nation today when we are so tragically aware of the almost twenty-six million people in our country who are living below or just at the poverty line and who can only hope to acquire even the bare necessities of life by purchasing on time, much less any of the other goods and services so consistently advertised in every media as being part of the good life in our society. The need in our nation is for more reasonable credit eligibility criteria and for greater availability of credit in many areas of our economy.

Nor do these complaint allegations proceed on any notion that buyers--and particularly low-income consumers--are under no obligation to exercise self-restraint and responsibility for their own actions. No one has suggested that the law merchant should be suspended because a consumer comes from the low-income segment of our society. A retailer's credit eligibility and collection practices as such are not the thrust of this charge in the complaint.

On the other hand, it is manifestly unfair to adopt a marketing policy which has the effect of luring unsophisticated customers into entering contractual obligations which in all likelihood they have little understanding of, convincing them that the credit is "easy" and prices are low and at the same time following a rigid collection policy resulting in default judgments and garnishments being levied against their meager wages.

It is impossible to assume that customers reading the advertisements of this respondent representing "Mr. Tash" as one who would make it possible for them to have "the good things in life", would realize that the lure of extending easy credit to all customers meant that they were subjecting themselves to overpriced merchandise and the possibility of having their salaries garnished as well.

Nowhere has respondent alerted its customers to the fact that despite its liberal credit eligibility policy, it follows a rigorous collection policy and that a delayed or missed payment can operate to call the entire debt due and subject the buyer to immediate payment of the purchase price when the very reason for seeking extended payment privilege is the buyer's inability to pay the purchase price in one lump sum. 1/

Certainly it is manifestly unfair to lure a customer into purchasing on credit without any regard to his ability to pay and din into his ears that the credit extended is easy and then turn around and sue every third customer who falls for the bait. As a minimum, a generous credit eligibility policy must be matched either with some rational basis for believing that the customer can and will pay or with an equally generous collection policy. Otherwise, the generous eligibility policy itself is dangerously tantamount to an inducement to customers to part with money under false pretenses.

1/ Indeed if respondent's customers read the installment contract provisions on this point, they would have found some confirmation for their assumptions of leniency by respondent on this point since their contracts nowhere stated that a missed or delayed payment would call the entire debt due but only that if payments were missed the seller "may" call the entire debt due.

We have no doubt that respondent's practices of extending credit liberally and of following a rigid collection policy took unfair advantage of its customers when looked at in the context of its entire marketing practices of luring customers into its store through its offer of free gifts, its advertising of easy credit and its representations that its merchandise was available at discount and bargain prices. The entire thrust of respondent's marketing strategy was to lull its customers into a feeling that respondent was their friend, would give them a break and would give them a better deal than they could get elsewhere. We conclude that these practices of respondent are unfair and deceptive and in violation of Section 5 of the Federal Trade Commission Act.

We conclude that respondent has violated Section 5 of the Federal Trade Commission Act and that an order should be entered. We turn now to a consideration of the order.

THE ORDER

Because of the hearing examiner's dismissal of this case, he did not give any consideration in his initial decision to the type of order which would be appropriate in the premises. A proposed order was attached to the complaint. Respondent has taken vigorous objection to some parts of this order. Complaint counsel urges that the proposed order, with some modifications, is proper and should be entered. We will consider the various provisions of the proposed order seriatim.

Respondent has not interposed any objection to paragraph 1 of the order as proposed, and we find the paragraph necessary and adequate to deal with the bait and switch allegations in the complaint. Paragraph 2 of the notice order was not urged by counsel supporting the complaint in their appeal brief, perhaps because it covers essentially the same practices as are already encompassed within the first prohibition of the order. Accordingly, we see no need for paragraph 2 of the notice order and are deleting it.

Paragraph 3 of the proposed order was designed to prohibit the misuse of representations of "discount" prices, and similar representations of that nature found in the present case. After having the benefit of a full hearing in this case, however, it has become apparent to us that this provision should spell out more precisely the steps respondent should take to avoid misrepresenting its prices as discount. The record herein reflected no attempt by respondent to check on any trade area prices before making claims of "discount eyeglasses." The record also disclosed that respondent's prices were substantially in excess of the trade area prices on several product lines and represented extremely high markups over cost. We concluded, therefore, that respondent's representations in its advertisements that its prices were discount and bargain were flagrantly deceptive.

In our judgment, the only way in which the public interest can be adequately protected against a repetition of such misrepresentations is to require respondent to make some effort to substantiate the trade area prices in advance of making "discount" claims. We are, therefore, requiring respondent in paragraph 2 of the order to sample principal retail outlets in its trade area before it makes such bargain or discount representations and to verify the fact that the prices which respondent wants to represent as "discount" or "bargain" are in fact significantly below the prices charged by a substantial number of the stores selling the same merchandise.

This provision does little more than crystallize in order form essentially the same duty that any retailer has--namely, to be able to support any comparative pricing claims he may make. (See Commission Guides Against Deceptive Pricing, Jan. 8, 1964.) In determining in the first instance whether pricing claims are true, we have permitted a respondent to demonstrate the validity of its claims on the basis of evidence of prevailing trade area prices without regard to whether this evidence of trade area prices was in fact in its files before the claim was made. However, in the

instant case, respondent has been found to have flagrantly misrepresented its prices. We do not believe that we ought to risk subjecting the public to future deceptive practices by giving respondent free rein to make any such claims it wants to without first having evidence to support them. To protect the public interest here, therefore, we are requiring respondent to gather its evidence before making the representations and to keep the evidence available for a reasonable period thereafter so that we will be able to determine whether it is in fact complying with the order.

Paragraph 4 of the notice order which accompanied the complaint would prohibit the inclusion of costs attributable to the extension of credit in the stated "cash" price of merchandise. Complaint counsel proposed essentially the same provision in their appeal brief (paragraph 3, A.B. 45), and respondent raised no objection to it. Paragraph 6 of the notice order prohibited misrepresentation of the fair market value of the merchandise. Complaint counsel, however, did not urge the adoption of this provision. Rather, they proposed a provision prohibiting credit sales to low-income customers at prices which greatly exceed the trade area prices unless a substantial number of sales are made at those same prices to customers paying cash (paragraph 4, A.B. 45-46). Respondent vigorously opposed this provision on the dual grounds that it was either too vague or an improper limitation upon the maximum prices which respondent could charge (R.B. 54-58). Respondent also objects to the last provision of the notice order (which is also urged by complaint counsel) on the grounds that it is too vague. This is a catch-all provision prohibiting credit practices which unfairly exploit low-income members of the consuming public.

We have considered respondent's objections to these paragraphs and have concluded that some modification is appropriate. It is indeed difficult to tailor cease and desist provisions which are sufficiently precise that respondent can be certain of the full extent of the

prohibited practices, but provisions which will at the same time protect unsophisticated customers from the variety of tactics which can be used to take unfair advantage of them.

As we stated in our discussion of the complaint allegations, we did not find that respondent's prices were "unconscionably high" in an absolute sense that would, without more, violate §5 of the Federal Trade Commission Act. Additionally, we did not find that the practice of recouping in the markup on "cash" prices a portion of the expenses of extending credit was, by itself, an unfair or deceptive act or practice. Rather, we believe that these practices are deceptive because of respondent's misrepresentations of "easy credit" through which it has lured low-income customers into exceedingly harsh contractual obligations and that the order provision with respect to these easy credit misrepresentations will cure the deceptions found here.

Paragraph 3 of the order being entered herein prohibits respondent from representing that its terms of credit are easy. The record amply demonstrates respondent's gross abuse of "easy credit" advertising, including its deceiving customers into thinking that they had "preferred" credit ratings. In fact respondent's terms of credit have been "easy" only in the very limited sense of being readily available, but have in all other respects been exceedingly harsh, not only in terms of the finance charge itself, but also according to the provisions of the various contracts utilized by respondent and its extensive use of legal proceedings to enforce its credit contracts. We do not believe that there is any effective means available of preventing respondent's misuse of "easy credit" advertising short of an outright prohibition. We could prohibit the use of "easy credit" advertising in connection with some types of harsh contractual provisions, but respondent would surely be able to create new, equally harsh provisions. We could also prohibit respondent from levying excessively high "finance" charges, but to do so would only compel

respondent to conceal an even greater portion of its credit expenses in its "cash" markup than it does already. Respondent's entire marketing strategy is directed to individuals who cannot pay cash and who cannot obtain credit elsewhere. The number of lawsuits and garnishments which respondent has initiated is extremely high. Such collection expenditures obviously mean that respondent's method of doing business on credit is costly. To conduct a profitable business, respondent will have to recoup these expenses in some manner--either through the markup built into the "cash" prices or through supplemental charges to credit customers.

We cannot predict the precise means which respondent might employ to recoup its credit expenses, whether in the form of high markups or high interest charges, or both as it has charged here in many transactions. Certainly one fact is clear--respondent's credit is not "easy". The only effective measure by which to prevent the deceptions involved in respondent's easy credit representations is to put an end to the "easy credit" illusion. This prohibition does not preclude respondent from advertising that its credit is readily available if in fact it extends credit to those who may be unable to obtain credit elsewhere and it is careful not to misrepresent that other terms of such credit are lenient. On the other hand, if respondent should decide in the future to alter its marketing strategy so that both its cash price and its finance charges are in fact "easy" compared to terms which are generally available, then it is free to petition the Commission for a modification of this order under §3.72(b) of the Commission's Rules of Practice.

Paragraph 4 of the order requires that if respondent makes any representations as to one or more of the credit terms available (for example, "no money down" or "pay only a dollar a week"), then such representations are to be accompanied by an explanation of all the credit terms in a manner which can be easily understood. Paragraph 5 provides that representations of percentage rates of

finance charges are to be in terms of the annual rate. These provisions are substantially identical to the requirements of § 128 and § 144 of Public Law 90-321, the "Consumer Credit Protection Act", enacted May 29, 1968, Title I of which ("Truth in Lending") is to become effective on July 1, 1969. Paragraph 6 of the order provides that respondent disclose to its customers before completing the sale the details of the finance charges being imposed. This is similar to § 128 and § 121 of the Truth in Lending Law.

The Consumer Credit Protection Act does not, of course, in any way pre-empt the Commission's jurisdiction over deceptive acts and practices in commerce, even if such acts may involve credit practices. There is no suggestion in the law or in the legislative debates which preceded its enactment that it was designed to pre-empt the Commission's jurisdiction. The purpose of that law is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit" (§ 103). Our jurisdiction, on the other hand, stems from unfairness and deception and has traditionally extended to credit practices as well as all other types of sales and promotion practices which are unfair or deceptive. It is important that our orders, when requiring disclosure of the same credit information as is required by the new law, employ the same definitions so that ambiguities and inconsistencies are avoided. However, where as here the order is designed to eliminate deception, and not merely to ensure uniformity of disclosure of relevant credit data, its terms must go beyond the requirements of the Consumer Credit Protection Act. For example, paragraph 6 which bears upon the disclosure to be made to any customer making a purchase on credit, requires the disclosure to be made not only in writing, but also orally. A substantial proportion

of respondent's customers lack sophistication and education (see Appendix A to this opinion). It is unlikely that many of them could read and clearly understand all of these terms as they are contained in the written contract. Therefore in our judgment it is essential that respondent be required to make these disclosures orally to its customers at the time when the price or the terms of credit are first discussed or referred to with the customer.

We have also concluded that it is essential that the disclosures required to be made in paragraphs 4 and 6 be made with respect to all credit transactions. The Consumer Credit Protection Act exempts certain sales from its disclosure requirements (Section 128(a)(7)(A) and (B)). Many of respondent's sales have involved finance charges of less than \$5.00. As Table B attached illustrates, the true annual percentage of these finance charges was substantial, ranging from 15% to 45% (contracts 14-20 in Table B). On small purchases with credit extending only over a brief period of time, finance charges of less than \$5 can represent a very substantial percentage rate, and customers solicited by this respondent must have some idea of how costly the credit is which respondent is seemingly so generous in extending. Accordingly, we have concluded that respondent must make the required disclosures with respect to all of its credit transactions.

We believe that the provisions of this order are "as specific as the circumstances permit" without unduly limiting respondent's freedom. 1/ To issue any more lenient order would be over-protection of respondent's merchandising practices at the expense of low-income members of the consuming public who can least afford to be deceived. If respondent cannot operate in the future as freely as it has in the past, it must remember that "having been caught violating the act, [it] must expect some fencing in." 2/

1/ FTC v. Colgate-Palmolive, 380 U.S. 374, 393 (1965).

2/ FTC v. National Lead, 352 U.S. 419, 431 (1957).

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1/ FTC v. Colgate-Palmolive, 380 U.S. 374, 393 (1965).

2/ FTC v. National Lead, 352 U.S. 419, 431 (1957).

APPENDIX A

CUSTOMER PROFILES

1. Roland Taylor: 50 years old, Negro, employed by Manger-Annapolis Hotel as elevator operator earning \$60.00 wages per week with no other income to support himself, his wife and his one child. He had no driver's permit and no bank accounts. The only other account appearing in his credit application was "Calvert Credit Corp." He noticed New York Jewelry's advertising for a free eye examination. He went there and was told he needed three pairs of eyeglasses--one for television, one for reading, and one pair of bifocals. He was sold three pairs for \$59.50 each plus finance charges. This contract called for no downpayment and failed to state the number, amount, or interval of installment payments. Two months later, while he had an outstanding balance of \$213.30, he was sold a Bulova watch by respondent for \$295, a cigarette lighter for \$24.95 and a heater for \$22.50, plus \$63.54 carrying charges, with no downpayment. His outstanding balance then totaled \$629, or 20% of his annual wages. Three months later he was financially in distress and pawned the watch for \$10 (CX 9, 20, 21; Tr. 575-589).

2. Preston William White: Single, Negro, employed for seven or eight months at the time of the hearing by a linen service earning \$60 per week gross wages. He testified that at the time of one transaction with respondent he was employed in the cafeteria at the Pentagon receiving a gross of \$79 every two weeks. The credit application says he worked for Union News at Union Station, but perhaps that was filled out at a different time. It fails to reveal Mr. White's wages, how long he had been employed by Union News, or how long he had lived in the area. It fails to disclose Mr. White's address or whether he owns or rents his residence. It does reveal that he had no other charge accounts, no bank accounts, and no driver's permit. Mr. White purchased a pair of eyeglasses from respondent for \$59.50 on March 30,

APPENDIX A
CUSTOMER PROFILES
(continued)

D. 8714

1966, bringing his total account with respondent at that time to \$197.33. With respect to this transaction, Mr. White testified as follows:

"Q. Did they tell you what this document was, Mr. White?

"A. You mean before I signed it?

"Q. Before you signed it or after you signed it, were you aware of what you were signing?

"A. Well, I knew a little bit about how to open an account. As far as signing this contract, they told me to sign a contract and I signed it.

"Q. What did they tell you this contract was for, Mr. White?

"A. They told me to read it and they told me what it was about.

"Q. What did they tell you it was about? Do you recollect?

"A. I just read the printing. I read the printing on it. They have something you read before you sign.

"Q. Can you tell me what this is?

"A. This is the contract here.

"Q. Do you know what it is for?

"A. It is for, when you open an account, you have to go by it."

(CX 1, 2; Tr. 102-116).

APPENDIX A
CUSTOMER PROFILES
(continued)

D. 8714

3. Mary Daughtry: husband's age 39, Negro, employed by Country Club Cleaners, husband employed by Northwest Development Corp., previously employed by Safeway. The credit application fails to state salaries or positions held or whether she and her husband are buying or renting their dwelling. Mrs. Daughtry was walking by the New York Jewelry store when a man standing in front of the store handed her a card and told her to enter the store to receive a free gift. She did enter and received a plastic flower as her gift. Mrs. Daughtry purchased an electric mixer from respondent for \$79.95 and signed one of respondent's contracts in blank on Dec. 26, 1964 (CX 31, 16 and 17).

4. Walter Whitfield: age, race and employer have all been left blank on this credit application, unlike most of the others. It lists three friends or relatives and gives his wife's name as Nannie. There is no information provided as to length of time living at present address, whether buying or renting, or as to driver's permit, bank account or charge accounts. The record contains one of respondent's contracts executed by Mr. Whitfield with the total price filled in. Mr. Whitfield's stipulated testimony reveals that this contract was blank when he signed it. At the time Mr. Whitfield was employed by Cafritz Realty Company in Arlington, Virginia, earning \$56 per week to support his wife and four children. He had been approached during his lunch break by a man who sold him a "Lord Tash" watch for \$2 a week without inquiring how much Mr. Whitfield was earning. Mr. Whitfield thought \$89.50 would be the total price, but the contract in the record states \$101.63 with no itemization of cash price, sales tax, or finance charges. Mr. Whitfield's watch started losing time; and when New York Jewelry refused to repair it, he stopped making payments. New York Jewelry sued Mr. Whitfield and garnished his wages (CX 4, 18, 19).

APPENDIX A
CUSTOMER PROFILES
(continued)

D. 8714

5. Synithia Gray Washington: 19 years old, single, Negro, employed for one week by G.S.I. (presumably, this refers to General Services, Inc., an organization that operates cafeterias in government buildings). She was previously employed by People's Drug Store. Neither positions nor wages were noted on the credit application, but her stipulated testimony reveals that she was a waitress earning \$1.25 per hour. Miss Washington had no driver's permit and no bank account or other charge account. One day when Miss Washington was walking by respondent's store, she was given a card and invited into the store by a man sitting at the door who told her she could get a free gift inside. She entered and received a pack of needles as her gift. She observed respondent's sign offering a free eye examination and had her eyes examined. She was told she needed glasses, but said she did not want any. Respondent's salesman convinced her to buy a pair by saying that the glasses had already been made up for her and could not now be sold to anyone else. She signed the contract for the eyeglasses, the total price being \$70.15. She also purchased a wedding set for \$150, plus tax and finance charges. She returned this five days later. She also tried to return the eyeglasses, but respondent refused to accept them and to cancel the contract. Then Miss Washington secured the assistance of a lawyer working for the Neighborhood Legal Services Project, and respondent permitted the glasses to be returned (CX 5, 41, 42, 43/44 and 45).

6. Johnnie Bruce Johnson: 20 years old, single, employed as a truck driver earning \$75 per week. He was renting his residence for \$10 per week and previously lived in North Carolina. He had no bank account and no automobile, but he did have an account with one other store. On July 21, 1966, Mr. Johnson purchased a pair of wedding rings from respondent for \$125 and two pairs of eyeglasses for \$47, all on time. About a week later he bought a watch from respondent for \$50 (CX 6, 46, 47 and 48).

APPENDIX A
CUSTOMER PROFILES
(continued)

D. 8714

7. John Edward Freeman: 20 years old, single, Negro, employed by A & P Food Store as a stock boy earning \$72 per week. Mr. Freeman had no driver's permit, no bank account and no other store accounts. He was walking by respondent's store when a man sitting in front of the store invited him in for a free eye examination. He entered and had his eyes examined. He was shown some merchandise and selected a ring for \$79.50. Respondent's salesman then told him that his eyeglasses were ready. He explained that he did not want any eyeglasses. He was finally persuaded to take the glasses for \$59.50 when the salesman said they had been made to fit Mr. Freeman and could not be sold to anyone else. Mr. Freeman later defaulted on his payments, was sued by respondent, and his wages were attached. He was represented by an attorney for the Neighborhood Legal Services Project, and the suit was dismissed and the attachment released (CX 7, 36, 37, 38).

8. Mrs. Minnie Alice Henry Fitzgerald: 24 years old, employed as a counter girl at the Shoreham Drug Store, earning \$85 every two weeks as the sole support for herself and her five children. She rented her residence for \$50 per month. She had a savings account, but no checking account, no other store accounts, and no driver's permit. She received a card in the mail from the New York Jewelry store offering a free gift and free eye examination. She had her eyes examined there and was told she needed reading glasses and sunglasses. She signed one of respondent's contracts for two pairs of eyeglasses at \$59.50 each plus \$21.42 in carrying charges, payable \$10 every two weeks (CX 8, 30, and 31).

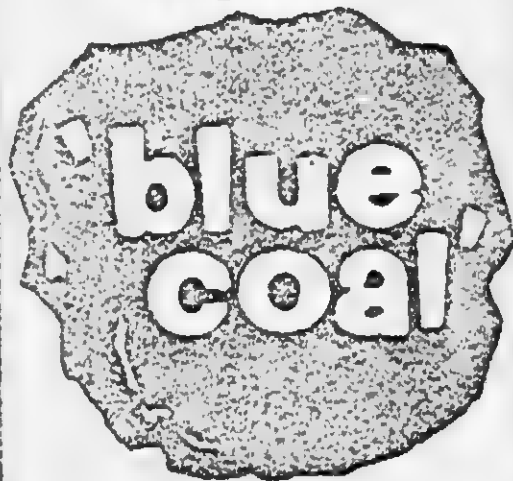
9. James and Alfreda Stubbs: age not shown, Negro. Husband is a construction worker earning \$69 per week; wife is not working. They have no driver's permit, no bank account and no other store accounts. They purchased a used TV, an antenna, 1 pair of eyeglasses and a service guarantee from respondent for \$193.50 payable \$6 per week (CX 61, 62 and 63).

APPENDIX A
CUSTOMER PROFILES
(continued)

D. 8714

10. Arthur Pratt: 49 years old, Negro, married, employed by the Department of Agriculture earning \$97 every two weeks. He paid \$62.50 rent per month. Mr. Pratt had no bank account, no other store accounts and no automobile or driver's permit. On April 16, 1966, Mr. Pratt signed one of respondent's installment credit contracts for a used TV for \$69.50, plus a \$35 service guarantee. With a previous \$16 balance, the contract totaled \$131, payable \$7 every two weeks. On July 9, 1966, Mr. Pratt signed another contract for a pair of eyeglasses and two watches totaling \$119. On September 17, 1966, he signed another contract for another pair of glasses for \$17.00 (CX 64, 65, 66, 67, 68 and 69).

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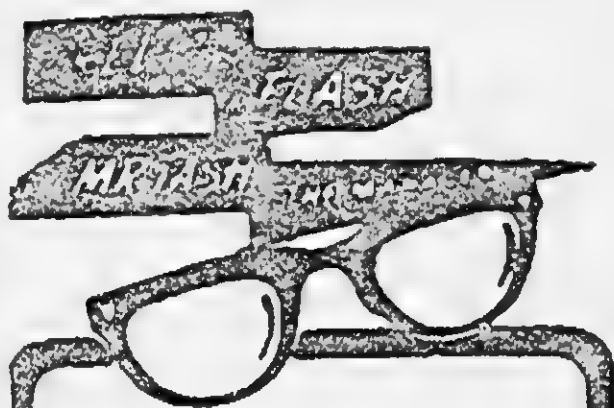
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CONSUMERS

FIRST FOR FUEL
FOR 67 YEARS

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FAMOUS BLUE COAL
DELIVERED IN OUR
FLEET OF GOLDEN
YELLOW TRUCKS

APPENDIX B



DISCOUNT EYE GLASSES

MADE WHILE YOU WAIT

Price includes **\$7.50**
lenses, frame from
and case. complete

Glasses Attractively Styled
Made Individually to Your
Prescription

Prescription filled at
our office or by mail. All
lenses guaranteed by
the manufacturer.

Repairs While You Wait

FRAME	from	\$3.00
LENS	from	\$3.00
TEMPLE	from	\$1.00

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FOR DRIVER'S LICENSE
HIGHEST CHARGE

New York Jewelry Co.
719 7th STREET, N.W.
EX. 3-0600 97

on subsidy of the
related interests. fr
Suskind. noted pro
7:00 WHFS (102.3 m.
Recital: Debussy
Quartet in G mine
with the Budapest Q
7:15 WOL (1450 k. c
Perri Fishing Rep
date fishing. bo
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of Chicago. discus
Anouilh's play. "Ecc

8:35 WOL (1450 k.
Comedy Spot: Fenta
-- "Charley Weaver
to Mama."

9:30 WOL (1450 k.
Basketball: Baltimo
Lobbs.

10:00 WHFS (102.3 m.
Sounds of Jazz: V
Phillips as host.

12:30 WWDC (1260
Swing Shift: Fester
Starr and The N
Maclean.

I.Q. ANSWERS

(Questions on Pa

- 1 Near sighted.
- 2 Millard Fillmore's
- 3 Cooler 4. Reape
- 5 Perennials.
- 6 Sir Galahad.
- 7 Monaco. 8 Love
- 9 Jurisdictional.
10. Mathematics.

TABLE A

EYEGLASSES		NEW YORK JEWELRY'S PRICE	NEW YORK JEWELRY'S ADJUSTED PRICE (SUBTRACTING COST OF EYE EXAMINATION)	TRADE AREA PRICE	NEW YORK JEWELRY'S PRICE AS % OF (AND APPROXIMATE NUMBER OF TIMES AS HIGH AS) TRADE AREA PRICE
1.	James Freeman CX 37, 30, Tr. 243	\$59.50	\$54.50	\$22.00	248% (2.5 times as high)
2.	Minnie Henry CX 31, 34, Tr. 242 CX 31, 35, Tr. 242	59.50 59.50	57.00 57.00	22.00 24.00	259% (2.6 times as high) 238% (2.4 times as high)
3.	Roland Taylor CX 21, 27, Tr. 244 CX 21, 28, Tr. 244 CX 21, 29, Tr. 244	59.50 59.50 59.50	57.83 57.83 57.83	28.00 22.00 22.00	207% (2.1 times as high) 263% (2.6 times as high) 263% (2.6 times as high)
4.	Elsie Hall CX 112, Tr. 235	25.30	20.00	9.00	222% (2.2 times as high)
5.	J. L. Dennard CX 84, Tr. 235	39.95	34.95	24.00	146% (1.5 times as high)
6.	R. Cavanaugh CX 86, Tr. 237	44.50	39.50	28.00	141% (1.4 times as high)
7.	Rosa Wesly CX 89, Tr. 237-8	49.50	44.50	32.00	139% (1.4 times as high)
8.	James L. Crowder CX 91, 92, 94, Tr. 238	59.50	54.50	24.00	227% (2.3 times as high)
9.	C. H. Logan CX 99, Tr. 239	59.50	54.50	28.00	195% (2.0 times as high)
10.	Etta Calloway CX 105, Tr. 239	42.95	37.95	24.00	146% (1.5 times as high)
				\$311.00	Average of 202% (2.0 times as high)

TABLE B

INDEPENDENT CALCULATIONS

INFORMATION APPEARING ON THE INSTALLMENT CONTRACTS

CONTRACT	TIME PRICE	CASH PRICE	FINANCE CHARGES	INSTALLMENT PAYMENTS	ANNUAL % OF FINANCE FEES	COMMENTS
1. Mary Daughtry Dec. 26, 1964 CX 17	blank	(There is no provision on any of the first five contracts (form "A") for disclosing either the cash price or the amount of finance charges imposed.)	blank	blank	unknown	(1) None of the planks on this contract form have been filled in except the purchaser's signature in <u>five</u> places. There is a cash register imprint in the margin of the contract which reads \$79.50, "2.40" and the date "Dec. 26.64"
2. James Freeman Sept. 11, 1965 CX 37	\$71.50			blank	unknown	
3. James Freeman Sept. 11, 1965 CX 38	87.90			blank	unknown	
4. Walter Whitfield Oct. 12, 1965 CX 19	101.63			\$ 2/week	unknown	
5. Roland Taylor Oct. 29, 1965 CX 21	196.50			blank	unknown	
6. Roland Taylor Dec. 23, 1965 CX 22	416.06	\$352.52	\$63.54	\$12/week	43%	(6) 34.67 weekly payments are required to pay the time price of \$416.06. Principal = \$352.52
7. Synithia Washington Jan. 8, 1966 CX 42	181.50	134.50	27.00	\$10 1/2 weeks	47%	(7) 15.15 biweekly payments are required to pay the time price of \$181.50. Principal = \$154.50.
8. Synithia Washington Jan. 8, 1966 CX 43/44	70.15	59.50	10.65	\$ 5/week	124%	(8) 14.03 weekly payments are required to pay the time price of \$70.15. Principal = \$119.00
9. Minnie Henry Jan. 15, 1966 CX 31	135.42	119.00 (-\$5 down)	21.42	\$10 1/2 weeks	67%	(9) 13.54 biweekly payments are required to pay the time price of \$135.42. Principal = \$119.00.
10. Charles Logan Jan. 18, 1966 CX 99	79.00	79.00	none	\$10/month	zero	

TABLE B (continued)

INFORMATION APPEARING ON THE INSTALLMENT CONTRACTS					INDEPENDENT CALCULATIONS	
CONTRACT	TIME PRICE	CASH PRICE	FINANCE CHARGES	INSTALLMENT PAYMENTS	ANNUAL % OF FINANCE FEES	COMMENTS
11. Etta Calloway Jan. 19, 1966 CX 105	32.95	42.95 (-10 down)	none	\$ 8/week	zero	(14) 4.18 weekly payments are required to pay the time price of \$62.68. Principal=\$61.30.
12. James Crowder Jan. 27, 1966 CX 94	119.00	119.00	none	\$ 7/week	zero	(15) 9.1 weekly payments are required to pay the time price of \$45.50. Principal=\$44.50.
13. Elly Freshley Mar. 26, 1966 CX 74	159.00	159.00	none	\$ 6/week	zero	(16) 5.2 monthly payments are required to pay the time price of \$26.00. Principal=\$25.00.
14. Preston White Mar. 30, 1966 CX 1	62.68	61.30	\$ 1.38	\$15/week	45%	(17) 5.05 weekly payments are required to pay the time price of \$50.50. Principal=\$49.50.
15. Barbara Brown April 5, 1966 CX 111	45.50	44.50	\$ 1.00	\$ 5/week	23%	(18) 16.43 biweekly payments are required to pay the time price of \$115.03. Principal=\$106.60.
16. Elsie Hall Apr. 6, 1966 CX 112	26.00	25.00	\$ 1.00	\$ 5/month	15%	(19) The true annual % cannot be computed without knowing the duration of the "loan".
17. Vernetta Henderson Apr. 11, 1966 CX 109	50.50	49.50	\$ 1.00	\$10/week	35%	(20) 5.49 biweekly payments are required to pay the time price of \$38.45. Principal=\$37.45.
18. Arthur Pratt Apr. 16, 1966 CX 68	115.03	106.60	\$ 8.43	\$7/2 weeks	24%	
19. Rosa Wesley Apr. 23, 1966 CX 89	44.50	49.50 (-\$6 down)	\$ 1.00	\$6/?? (unclear)	unknown	
20. J. L. Dennard Apr. 23, 1966 CX 84	38.45	39.95 (-\$2.50 down)	\$ 1.00	\$7/2 weeks	21%	

TABLE B (continued)

INFORMATION APPEARING ON THE INSTALLMENT CONTRACTS					INDEPENDENT CALCULATIONS	
CONTRACT	TIME PRICE	CASH PRICE	FINANCE CHARGES	INSTALLMENT PAYMENTS	ANNUAL % OF FINANCE FEES	COMMENTS
21. Alfreda Stubbs May 6, 1966 CX 62	193.50	174.90	\$18.60	\$ 6/week	33%	(21) 32.25 weekly payments are required to pay the time price of \$193.50. Principal=\$174.90
22. John Edmunds May 10, 1966 CX 121	175.82	199.52 (-\$31 down)	7.30	\$15/2 weeks	18%	(22) 11.72 biweekly payments to pay the time price of \$175.82. Principal=\$168.52. \$31 downpayment includes a \$15.50 "allowance"
23. Arthur Pratt Jul. 9, 1966 CX 69	not shown	119.00	not shown	\$10/2 weeks	unknown	(23) - (26) There is no provision on any of the last four contracts (form "C") for disclosing either the total "time price" or the dollar amount of finance charges imposed. The pre-printed contract form states that 1 1/2% per month will be levied on the unpaid balance, but neither the contracts nor any other evidence in the record discloses what these customers were in fact charged.
24. Johnnie Johnson Jul. 21, 1966 CX 47	not shown	128.75 (-\$10 down)	not shown	\$15/week	unknown	
25. Johnnie Johnson Jul. 21, 1966 CX 48	not shown	47.00	not shown	\$20/week	unknown	
26. Arthur Pratt Sept. 17, 1966 CX 66	not shown	17.00	not shown	\$ 5 1/2 weeks	unknown	

December 1, 1966

1 HEARING EXAMINER LYNCH: Mr. Epstein, will you call
2 your first witness, sir?

3 MR. EPSTEIN: Yes, Your Honor.
4 Because of the number of witnesses appearing here,
5 counsel for both parties have agreed that we could have stipula-
6 tions to dispose of.

7 HEARING EXAMINER LYNCH: Do that with the witnesses
8 are called.

9 MR. EPSTEIN: The Commission calls Preston William
10 White.

11 HEARING EXAMINER LYNCH: Is this one of the witnesses?

12 MR. EPSTEIN: This is one we had.

13 PRESTON WILLIAM WHITE was there, called as a witness
14 for the Commission and, having been first sworn, testified
15 as follows:

16 DIRECT EXAMINATION

17 By Mr. Epstein:

18 Q Mr. White, will you give the reporter your full name and
19 address?

20 A Preston William White, 5526 9th Street, Northwest.

21 Q Mr. White, were you subpoenaed here to testify?

22 A Yes.

23 Q Where are you employed, Mr. White?

24 A I am employed now at C. and C. Elite Motor Service.
25

1 HEARING EXAMINER LYNCH: Mr. Epstein, will you call
2 your first witness, sir?

3 MR. EPSTEIN: Yes, Your Honor.

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5 counsel for both parties have agreed that we would have stipula-
6 tions to dispose of.

7 HEARING EXAMINER LYNCH: Do that after the witnesses
8 are called.

9 MR. EPSTEIN: The Commission calls Mr. Preston William
10 White.

11 HEARING EXAMINER LYNCH: Is this one of the witnesses?

12 MR. EPSTEIN: This is one we had listed.

13 - - -

14 PRESTON WILLIAM WHITE: was thereupon called as a witness
15 for the Commission and, having been first duly sworn, testified
16 as follows:

17 DIRECT EXAMINATION

18 By Mr. Epstein:

19 Q Mr. White, will you give the reporter your full name and
20 address?

21 A Preston William White, 5526 9th Street, Northwest.

22 Q Mr. White, were you subpoenaed here to testify?

23 A Yes.

24 Q Where are you employed, Mr. White?

25 A I am employed now at C. and C. Elite Linen Service.

1 Q How long have you been employed there?

2 A I have been employed there for seven or eight months now.

3 Q Can you tell us what your wages are?

4 A My wage is no more than \$60 a week.

5 Q Is that your takehome pay, \$60 a week?

6 A No.

7 Q Your gross wages are \$60 a week?

8 A Yes.

9 Q Are you married?

10 A No.

11 Q Do you have any family that you support?

12 A No.

13 Q Are you familiar with a company known as the New York
14 Jewelry Company?

15 A Yes, I am.

16 Q How are you familiar with this company, sir?

17 A How I got involved with them exactly: I happened to be
18 coming by the store, you know. I was not too interested in
19 credit, but the way they have it set up, they have a person on
20 the outside who says "Would you like to come in and get this
21 gift?" And you do not know what kind of a gift until you go
22 inside for curiosity, and that is how I happened to. They asked
23 "Would you like to open an account?" So, I thought it was a
24 watch or something, and I did not know what it was, and after I
25 realized that it was a pen.

1 Q Would you tell us where the store is?

2 A Seventh Street. I do not know the address.

3 Q Seventh Street, Northwest?

4 A Yes.

5 Q You went into the store for this gift, and you talked to
6 someone in the store. Did you have a conversation with somebody
7 in the store?

8 A Oh, yes.

9 Q Would you tell us what this conversation was?

10 What did the man tell you?

11 A Actually, when I got in the store -- I just remember a little
12 bit of it. It has been so long ago.

13 Q When was it? Do you remember?

14 A I know it was last year, beginning the first part of the
15 year. I do not remember exactly.

16 Q To the best of your recollection, would you tell us what
17 happened?

18 A When I went into the store, they gave me the gift, and they
19 asked: "Do you want anything?" "Would you like to open up an
20 account?"

21 After you realize you got in there and you did not get
22 anything but a pen -- so I opened an account at the time. It
23 is not the point that I did not want to pay the people, because
24 you see, I told the man --

25 HEARING EXAMINER LYNCH: Just answer the question,

1 please.

2 BY MR. EPSTEIN:

3 Q In opening up the account, Mr. White, did you buy something
4 that day?

5 A No, I did not buy anything that day I do not think.

6 Q Did there come a time when you bought something from the
7 New York Jewelry Company?

8 A Yes, I put money down on a watch.

9 Q Do you remember what kind of a watch it was?

10 A I do not remember. It was a Swedish-made watch.

11 Q In opening up the account, did you have conversation with
12 somebody in the store about opening up the account?

13 A Yes.

14 Q What did they ask you, Mr. White? What was the nature of
15 that conversation?

16 A They wanted me to open up an account, and they asked me
17 where I worked and all that.

18 Q Were you working at that time?

19 A Yes, I was working at the time.

20 Q Where were you working?

21 A I was working at the Pentagon.

22 Q What was your job there?

23 A In the cafeteria.

24 Q What were your wages at that time?

25 A I got paid every two weeks, but the wages were \$79. That

1 is gross. They take out a few things. I did not get all that
2 money.

3 Q Now, Mr. White, I will ask you --

4 MR. EPSTEIN: First, I will ask to have this marked
5 as an exhibit.

6 (Discussion was had outside the record.)

7 BY MR. EPSTEIN:

8 Q Mr. White, when you had this conversation and you selected
9 the watch, did you sign a paper?

10 HEARING EXAMINER LYNCH: My recollection of the record
11 is that you asked the witness with respect to whether or not he
12 opened up an account.

13 MR. EPSTEIN: Let me back up a bit.

14 By Mr. Epstein:

15 Q What were the questions they asked you when you opened
16 the account with them?

17 A The procedure, like in any store that you go to, they ask
18 you: "Have you ever had an account before this?" But they asked
19 me where I worked and how much I made, the routine thing, and I
20 was kind of scared because I never had any account before I got
21 this account. So, they accepted me anyway.

22 Q Do you trade in any stores in Washington?

23 A No.

24 Q Have you bought merchandise from any other store in town
25 where you had a credit account?

1 A No.

2 Q After they had asked you these questions, did you buy this
3 watch you were talking about that day?

4 A The whole complete price?

5 Q Did you agree to buy the watch that day?

6 A Well, it is kind of hard to remember. It has been so long
7 ago.

8 HEARING EXAMINER LYNCH: The witness said that he
9 did not make a purchase, that he did not make a purchase until
10 subsequently, after the opening of the account. At the time
11 he did, he bought a watch.

12 That is my recollection of his testimony.

13 By Mr. Epstein:

14 Q When did you make the down payment on this watch, Mr.
15 White?

16 A I believe the next time I made a down payment when I came
17 back -- It has been so long -- I may have made it at the same
18 time.

19 Q You took the watch with you?

20 A When I made my payment, I put something down on it.

21 Q But as I understand --

22 MR. EPSTEIN: I want the record to be clear on this,

23 Your Honor.

24 By Mr. Epstein:

25 Q Do I understand that you are not clear in your mind whether

1 or not you made a payment?

2 A It has been so long.

3 Q Now, at the time you made this down payment on the watch,
4 Mr. White, did you sign a paper with the New York Jewelry Company?

5 Did you sign your name to any document while you were there?

6 Did they ask you to sign anything?

7 A I am not sure. I think so.

8 Q Well, I will put in front of you what has been marked as
9 Commission's Exhibit 1, and ask you, Mr. White, if you recognize
10 your signature on this document.

11 A Yes, that is my signature. Yes, that is mine.

12 Q Could you tell us -- Do you remember, Mr. White, when you
13 signed this document?

14 A Well, I signed it right after I got the account with them,
15 after I realized that they wanted me to open an account.

16 Q Did they tell you what this document was, Mr. White?

17 A You mean before I signed this?

18 Q Before you signed it or after you signed it, were you
19 aware of what you were signing?

20 A Well, I knew a little bit about how to open up an account.

21 As far as signing this contract, they told me to sign a contract
22 and I signed it.

23 Q What did they tell you this contract was for, Mr. White?

24 A They told me to read it and they told me what it was about.

25 Q What did they tell you it was about?

1 Do you recollect?

2 A I just read the printing. I read the printing on this.

3 They have something you read before you sign.

4 Q Can you tell me what this is?

5 A This is the contract here.

6 Q What is the contract for?

7 Do you know what it is for?

8 A It is for, when you open an account you have to go buy it.

9 HEARING EXAMINER LYNCH: I did not get the answer.

10 Will you read the answer?

11 (The record was read by the reporter.)

12 By Mr. Epstein:

13 Q Do you remember having signed this in the New York Jewelry
14 Company? This paper is a copy.

15 MR. EPSTEIN: Let me point out that the witness is
16 looking at a copy of the original which has been made.

17 By Mr. Epstein:

18 Q But you do recognize this paper as the one you signed at
19 that time?

20 A Yes.

21 MR. EPSTEIN: I offer Commission's Exhibit 1 in evi-
22 dence.

23 MR. MC KEAN: No objection.

24 HEARING EXAMINER LYNCH: It may be received.

25 (The document heretofore marked as Commis-
sion's Exhibit 1 was received in evidence.)

1 By Mr. Epstein:

2 Q Now, Mr. White, coming back to this contract that you say
3 you signed when you opened the account.

4 Was there other writings on the parts that had been filled in,
5 when you signed this contract?

6 In other words, were there other writings, indicating
7 to you the writing at the top, the pen notations of the item,
8 and the items down here?

9 Were all these writings filled in at the time you signed
10 this, Mr. White?

11 A No.

12 Q Would you tell us what it looked like when you signed
13 this?

14 A It was a blank piece of paper. As far as this "Man's
15 watch", I did not sign that. All the bills, and how much it
16 added up to, that is their doing, but, so far as me filling
17 out the application, you know, where I work, and all that.

18 Q Now, is this writing down here in your handwriting, down
19 at the bottom of Commission's Exhibit 1?

20 Is this your handwriting?

21 A No, that is not mine; only my name.

22 Q So, in the two places where you signed your name, that is the
23 only thing that you had signed?

24 A Yes.

25 Q Now, Mr. White, I want to ask you --

1 MR. EPSTEIN: First, may I have this marked?

2 (The document referred to was marked as Commission's 2,
3 for identification.)

4 By Mr. Epstein:

5 Q How much did they tell you it was? Did they tell you how
6 much the watch was that you got at New York Jewelry? Did they
7 tell you the price?

8 A Well, no. No, they did not tell me the price.

9 Q What did they tell you about the cost of the watch, Mr.
10 White?

11 A I put the down payment on the watch. They told me after-
12 wards it was \$85.

13 Q Now, Mr. White, what was the agreement that you made to them
14 to pay for the watch?

15 What were the terms that you were going to pay for it?

16 A I agreed to pay -- at the time I could pay that much. It
17 was about \$15 to \$20.

18 HEARING EXAMINER LYNCH: Doesn't the contract speak for
19 itself?

20 MR. EPSTEIN: My question in that direction was whether
21 the witness had recollected the transaction which had occurred
22 and I just wanted to make sure that we were clear that he did.

23 By Mr. Epstein:

24 Q Now, Mr. White, I want to put before you what has been
25 marked for identification as Commission's Exhibit 2 for identifi-

1 cation. This is a copy. I want to ask you whether Commission's
2 Exhibit 2, in its original form, looked like this yellow card
3 that I am showing you.

4 MR. EPSTEIN: I want to make clear that the witness is
5 seeing a xerox copy, which is white.

6 I want to ask you, Mr. White, do you remember having
7 seen this card at New York Jewelry Company?

8 THE WITNESS: Yes, I remember that.

9 By Mr. Epstein:

10 Q I want to ask you: When they were talking about where you
11 worked, and the questions they asked you, did they make notations
12 on this card, a copy of which is in your hand?

13 Does that refer to information concerning you?

14 A Yes.

15 MR. EPSTEIN: I offer Commission's Exhibit 2, for
16 identification in evidence.

17 HEARING EXAMINER LYNCH: What is that supposed to be?

18 MR. EPSTEIN: This is the credit application for Mr.
19 White. That reflects the answers to the questions he was asked
20 at New York Jewelry concerning where he worked, and so forth.

21 HEARING EXAMINER LYNCH: as I understand the witness'
22 testimony and the way you have been interrogating the witness,
23 Mr. Epstein, you introduced Commission's Exhibit 1 which is a
24 conditional sales contract dated March 30, 1966, and, as I
25 understood the witness, he opened the account in January of

1 1966 and did not make a purchase until sometime subsequent there-
2 to, which I assume is indicated by Commission's Exhibit 1.

3 For the purpose of the record, Commission's Exhibit 2
4 is what you were referring to when you questioned the witness
5 concerning his first visit to the respondent's place of business,
6 and that was the filling out of an application for the purpose
7 of receiving credit. Is that right?

8 MR. EPSTEIN: Not exactly.

9 HEARING EXAMINER LYNCH: The witness clearly stated
10 that he went in and opened an account and did not recall just
11 when he went in and made a purchase, made a down payment on the
12 watch. Then, you introduced a conditional sales contract
13 showing the transaction, which is very clear to me, but now you
14 are introducing Exhibit 2 which seems to me is your premise,
15 the original premise, of the witness going in and receiving a
16 fountain pen and establishing credit.

17 THE WITNESS: That is the way I went in.

18 HEARING EXAMINER LYNCH: Is that what you signed?

19 Commission's counsel showed you this, when you made
20 application for credit, the first time you went into the
21 store; do you recall?

22 I am trying to get the record straight.

23 You first went in and made application and signed a
24 paper. Then, you left and came back later and actually purchased
25 something.

1 THE WITNESS: My signature is here.

2 HEARING EXAMINER LYNCH: This is what you signed the
3 first time you went into the store. Or do you have a recollec-
4 tion?

5 THE WITNESS: I know I signed the paper. I do not
6 know exactly. It has been so long.

7 HEARING EXAMINER LYNCH: I am just trying to get the
8 record straight.

9 MR. EPSTEIN: I think the witness was unclear as to
10 exactly when he first went in. I think he said near the beginnin
11 of the year. I think he said January. He further had some ques-
12 tion in recollecting whether he made the down payment at the
13 time he first went in or whether it was a time later. He said
14 it was one or the other.

15 HEARING EXAMINER LYNCH: The record speaks for itself.
16 Go ahead.

17 By Mr. Epstein:

18 Q Mr. White, after you had agreed to sign the paper and
19 agreed to buy this watch, did you continue making payments on
20 the watch?

21 A Yes, I made pretty good payments on the watch.

22 Q When you went into the New York Jewelry Company to make
23 payments, did you also buy other merchandise in New York Jewelry?

24 A It was some time after I bought one, then I bought another.

25 Q Another what?

A Another watch.

1 Q After you bought the second watch, did you buy other mer-
2 chandise from New York Jewelry?

3 A One more ring, that is all.

4 Q Altogether, you bought two watches and a ring?

5 Over what period of time?

6 A No more, until the end part of last year.

7 Q Had you paid for the first watch, when you bought the
8 second?

9 A Yes, I paid for the ring and one watch.

10 Q Had you paid for second watch when you bought the ring?

11 A No, I had not finished paying for that.

12 Q Now, Mr. White, when you made payments to New York Jewelry
13 Company, how did you make these payments to them?

14 A Well, what they asked me to pay, if I could pay it I would,
15 and if I could not I would tell them anyway ahead of time.

16 Q Do you go into the store in person or do you mail the
17 payments to them?

18 A You can do it either way.

19 Q Which do you do?

20 A I made mine in person.

21 Q When you made the payments in person, did you have any
22 conversation with anyone in the store when you went in to make
23 payments?

24 A Well, employees they have; when you come into the store,
25 he always say -- I do not know what he is supposed to say, but.

1 he would ask me what I would like today, regardless. He does
2 not know if you have got credit for it, but he would still ask
3 you the question.

4 Q Does he ask you this everytime you go into the store, Mr.
5 White?

6 A Well, I do not know -- he did not ask me everytime.

7 Q But he asked you a great number of times?

8 HEARING EXAMINER LYNCH: Mr. Epstein, this is your
9 witness and this is direct examination. Do not lead the witness.

10 "He asked you a great number of times?" That is lead-
11 ing the witness.

12 MR. EPSTEIN: Strike the question.

13 Mr. Epstein:

14 Q Mr. White, how long have you lived on 9th Street at your
15 present residence?

16 A I have lived there seven months -- No, excuse me. I have
17 lived there at least two years now.

18 Q Where did you live before that?

19 A I lived with my uncle.

20 Q Mr. White, do you have any accounts where you buy merchandise
21 from any other stores in Washington?

22 A No, after I realized --

23 HEARING EXAMINER LYNCH: You answered the question.

24 THE WITNESS: No.

25 MR. EPSTEIN: I have no further questions, Your Honor.

Site
25/67

WARD & PAUL

C. H. W. Watson, D. C.

1 the Commission and, having first been duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION

4 By Mr. Epstein:

5 Q For the record, Mr. Ullman, will you state your name and
6 address to the reporter.

7 A Eugene Ullman.

8 Q What is your address?

9 A 9039 Sligo Creek Parkway, Silver Spring, Maryland, Apart-
10 ment 1203.

11 Q Mr. Ullman, where are you employed?

12 A New York Jewelry Company.

13 Q How long have you been employed there?

14 A Better than 25 years.

15 Q Would you tell us what your duties are with the New York
16 Jewelry Company?

17 A I am the manager.

18 Q As manager, would you describe to us just briefly and in a
19 general way what your duties are?

20 A General managerial duties: hiring, firing, handling
21 the management of the store.

22 Q Do you have any area of responsibility for purchases
23 that are made in the store for goods that are sold to the
24 public?

25 A I do.

1 Q Do you also keep track of the accounts of the customers
2 who trade with New York Jewelry?

3 A I supervise such activities, yes.

4 Q Can you tell us who the owner of the store is, Mr. Ullman?

5 A Mr. Leon Tashoff.

6 Q Would it be a fair characterization to say that Mr. Tashoff
7 leaves the day-to-day operations of the store in your hands?

8 A Yes, I would say so.

9 Q In that connection, with Mr. Tashoff, are you responsible
10 for the retail pricing policies of the store, in terms of the
11 merchandise that you sell?

12 A To some extent, yes, sir.

13 Q Now, in the day-to-day operations of the New York Jewelry
14 Company, could you tell us briefly what Mr. Tashoff does?

15 A Mr. Tashoff is the owner, of course, of the business and
16 sets forth the policy that I will follow.

17 MR. MC KEAN: With your permission, may I interrupt
18 here for a minute?

19 We had discussed this before, and since it may have
20 a bearing on this line of questioning and having discussed putting
21 it on the record which we have not done up to this point, the
22 answer denied or did not admit that Mr. Tashoff exercises direc-
23 tion and control over the business as alleged in the complaint,
24 and we are admitting that Mr. Tashoff does exercise control.
25 It is his business, and he is the proprietor.

1 MR. EPSTEIN: That satisfied me.

2 By Mr. Epstein:

3 Q Is it fair to say, Mr. Ullman, that in the day-to-day
4 course of the business, there are certain decisions in the
5 day-to-day operations, however, that you have authority to exer-
6 cise total discretion in?

7 A Yes.

8 Q Without having to talk to Mr. Tachoff or consult him about?

9 A Correct.

10 Q Now, Mr. Ullman, how long has New York Jewelry been in
11 business?

12 A Oh, some 40 years I would say.

13 Q Can you tell us what kinds of merchandise are sold in the
14 New York Jewelry Company?

15 Can you enumerate for us the types of goods that are
16 available?

17 A General jewelry; household appliances; television; furniture;
18 and we have an optical department.

19 Q Now, if I can back up with you, over those items that you
20 have enumerated?

21 Have you finished?

22 If I could back up with you over those items, can I ask you,
23 Mr. Ullman, to fill me in as to what percentage of the annual
24 sales, total annual sales, would be attributable to eyeglass
25 sales?

1 A I could only estimate such.

2 Q What would be your estimation?

3 A Possibly 20 per cent.

4 Q And as to watches, what percentage of your sales would be
5 attributable to the sale of watches?

6 A Again, it would only be an estimate. I would say in the
7 area of 40 per cent.

8 Q And how about other jewelry?

9 A Probably in the area of 30 per cent.

10 Q How about furniture?

11 A I would say that all other categories, to my best estimate,
12 would fall in the remainder.

13 MR. EPSTEIN: Now, I will ask the reporter to mark
14 for identification Commission's Exhibit 51.

15 (The document referred to was marked as Commission's
16 Exhibit 51, for identification.)

17 By Mr. Epstein:

18 Q Mr. Ullman, I show you what has been marked for identifica-
19 tion as Commission's Exhibit 51 and ask you if you can identify
20 that.

21 A This is a statement of operations.

22 Q Are you familiar with it, Mr. Ullman?

23 A To a degree.

24 Q Is this kept in the normal course of business records in the
25 business of the New York Jewelry Company?

A Such statements are prepared by our accountant.

1 it?

2 THE WITNESS: I do, sir.

3 HEARING EXAMINER LYNCH: At this time, Mr. Epstein,
4 I am going to deny your offer and let you proceed with the
5 witness. I may reconsider it after the witness has testified.

6 Proceed.

7 By Mr. Epstein:

8 Q Can you tell me approximately what the gross annual sales
9 are of the New York Jewelry Company?

10 A Not from memory, no, sir.

11 MR. MC KEAN: Would you make that specific for one
12 year, a given year?

13 By Mr. Epstein:

14 Q Mr. Ullman, do you know what the annual sales, gross dollar
15 sales, were for New York Jewelry in the calendar year 1965?

16 A My best recollection would be in the area of \$350,000.

17 Q To the best of your recollection and knowledge is that
18 approximately the figure for gross sales for 1964?

19 A I have no recollection of those figures.

20 Q You have no recollection of any gross figures for 1964?

21 A Not at this time, no.

22 Q For 1963?

23 A No, I would not be able to quote from memory.

24 MR. MC KEAN: To avoid taking up time with this, as
25 I said, we are willing to provide them with the gross sales

1 figure.

2 HEARING EXAMINER LYNCH: That is my understanding.

3 By Mr. Epstein:

4 Q Now, of this figure that we will talk about for 1965, Mr.
5 Ullman, this \$350,000, what percentage of those sales would
6 have been made on credit?

7 A The majority of those sales were made on credit.

8 Q Would you say more than 70 per cent?

9 A I would.

10 Q Would you say more than 85 per cent?

11 A I would judge that that is approximately correct.

12 Q Would you say more than 90 per cent?

13 A It would be a guess.

14 HEARING EXAMINER LYNCH: Do not guess. He said
15 approximately 85 per cent.

16 Ask the next question.

17 By Mr. Epstein:

18 Q Now, what percentage of this \$350,000 would be represented
19 in cash transactions, Mr. Ullman, where the customer walks in and
20 makes a purchase and gives you cash money for the total price of
21 the goods?

22 A I believe that is the same as the last question.

23 HEARING EXAMINER LYNCH: He said 15 per cent, as I
24 understood it.

25 MR. EPSTEIN: I am sorry. I did not hear that.

1 A That is right.

2 Q How many employees do you have, Mr. Ullman, who are directly
3 connected with your optical department?

4 MR. MC KEAN: I object to the question and ask that
5 Mr. Epstein clarify what he means by "directly connected".

6 HEARING EXAMINER LYNCH: Can you answer the question?
7 It is a general question. Do you have four or five or three?
8 Who takes care of the optical department?

9 THE WITNESS: If we are trying to state people whose
10 sole duty is to be engaged in the optical department, I do not
11 believe that I can clearly state that.

12 HEARING EXAMINER LYNCH: Ask him, Mr. Epstein, how
13 it is set up.

14 By Mr. Epstein:

15 Q Would you describe to us how your optical department is
16 set up?

17 Would you give us the general physical plan?

18 A There is, of course, an optometrist whose duty it is to
19 examine the patients and write the prescriptions for glasses.

20 There are persons who are engaged in what we term dispens-
21 ing of the eye glasses, that is, helping the patient select
22 frames, and so forth, and writing the actual order for the
23 glasses.

24 There are people engaged in setting up the accounts for
25 those who chose to buy, to have their optical services on

1 credit.

2 There are those who tend to take care of assembling the
3 stock necessary for the manufacture of the eyeglasses, and
4 then there are those who are actually engaged in the manufacture
5 of the eyeglasses.

6 Q Is your optometrist an employee of New York Jewelry
7 Company?

8 A He is salaried.

9 Q Is he on the premises all the time?

10 A No, he is not.

11 Q Who are the clerks? Who specifically are the clerks
12 that handle the selection of eyeglasses for the patients?

13 A These are the sales people that we have discussed before.

14 Q None of them have that specific duty to serve only for
15 assistance in the selection of eyeglasses?

16 A No.

17 Q Who is the optometrist that you have?

18 Who is your employee?

19 A Dr. Oliver Dantzic.

20 Q I understood you to say that Dr. Dantzic is on a salary.

21 Does that mean he is paid per week, no matter how many people
22 come in?

23 A That is not the fact. He is paid per examination.

24 Q So, Dr. Dantzic comes in at the request of you to do an
25 examination?

1 A That is correct.

2 Q Does he have fixed office hours in your store?

3 A He is available during our open hours.

4 Q Does he have fixed office hours in your store?

5 A I could not say that he does, no.

6 Q What is his fee for an examination?

7 A \$5 per examination.

8 Q That is what he is paid by New York Jewelry?

9 A That is correct, sir.

10 Q Mr. Ullman, you mentioned manufacturing glasses.

11 Who manufactures the glasses in the New York Jewelry
12 Company?

13 A We have, up until very recently, employed an optician
14 whose sole duty it was to manufacture the eyeglasses.

15 Now, Dr. Dantzic does some of it, and I do the remainder.

16 Q Who does the eye examinations when Dr. Dantzic is not there?

17 A No one.

18 Q Does New York Jewelry Company do any advertising?

19 A Yes, we do.

20 MR. EPSTEIN: I will ask the reporter to mark
21 these as Commission's Exhibits 52, 53, 54, 55, and 56.

22 (The advertisements were marked as Commission's Exhibits
23 52, 53, 54, 55, and 56, for identification.)

24 By Mr. Epstein:

25 Q How long has Dr. Dantzic been employed by New York Jewelry
Company?

1 Epstein.

2 Q Do you know the market to which Station WUST appeals?

3 A My answer to that question would be the same as the last

4 one.

5 Q Do you listen to Station WOOK, Mr. Ullman?

6 A Sometimes.

7 Q Do you listen to WUST?

8 A Sometimes.

9 Q For the purpose of listening to your advertising, or as
10 a general policy?

11 A I would have to admit that I was listening for our adver-
12 tising, yes, sir.

13 Q Who writes the advertising copy for New York Jewelry?

14 A I do.

15 Q Would you say that you wrote the ads that we just referred
16 to, Commission's Exhibits 52 through 56?

17 A I have not read them over, but I would imagine that I did.

18 Q Now, Mr. Ullman, directing your attention to Commission's
19 Exhibit 52 that is in evidence, can you tell me who it is
20 directed to when you say that Mr. Tashoff will give credit to
21 everybody. Who specifically are you directing that advertising
22 to?

23 A To the people who listen to the radio.

24 Q That is what we are trying to find out. Who listens?

25 A Mr. Epstein. I do not know.

MR. MC KEAN: I think the witness has answered the

1 question.

2 MR. EPSTEIN: I think that is a matter of interpreta-
3 tion.

4 By Mr. Epstein:

5 Q Mr. Ullman, referring to Commission's Exhibit 54, I am
6 asking to whom it is directed, that advertising statement that
7 Mr. Tash, the manager, gives credit to everybody. It says:

8 "If you have never had credit or if you have lost your
9 credit, Mr. Tash, the manager, will arrange terms."

10 Can you tell me to what kind of an audience, or what
11 individuals, that particular advertisement was directed to?

12 A To whoever was listening to the advertisement.

13 Q Mr. Ullman, is it true that this advertising is directed
14 to people who have lost their credit?

15 A It says so in the advertisement.

16 Q Is the advertising directed to people who have lost their
17 credit?

18 A Yes.

19 Q Is it directed to people who have never had credit before?

20 A Yes.

21 Q Is it directed to people who have not been able to get
22 credit anywhere else?

23 A It says "If others have turned you down."

24 Q I want to know: Is it directed to people who have never
25 had credit anywhere else?

1 A It says: "If others have turned you down."

2 Q I want to know, is it directed to people that have never
3 had credit anywhere else?

4 HEARING EXAMINER LYNCH: The witness answered your
5 question. The exhibits are already in. That is the best evidence.
6 And he just read from it. Do not be argumentative.

7 MR. EPSTEIN: I want this to be clear. He is an
8 adverse witness.

9 HEARING EXAMINER LYNCH: Ask the next question.

10 By Mr. Epstein:

11 Q Who sets the prices at the New York Jewelry Company?

12 A I have the responsibility in that area.

13 Q Now, Mr. Ullman, in the course of the setting of the prices,
14 do the retail goods that are available for sale to the consum-
15 ing public contain price tickets of the retail value of the
16 merchandise as it is displayed to the public?

17 A I do not understand you.

18 MR. EPSTEIN: Will you read the question?

19 (The question was read by the reporter.)

20 MR. MC KEAN: I object. If he is asking, "Do they
21 have price tickets?", that is one thing. What this means,
22 I am not sure.

23 HEARING EXAMINER LYNCH: Make the question a little
24 more specific. It is too general. The objection is sustained.
25 Ask the question again.

By Mr. Epstein:

Q Do your goods have price tickets on them?

1 A They do.

2 Q Are the price tickets affixed by you or the employees
3 of New York Jewelry Company?

4 A Either by me or by employees, yes, sir.

5 Q Now, when we refer to these price tickets, I want to clarify
6 the type of thing we are talking about. They are price tickets
7 that you have put on watches and rings and radios and small
8 appliances, and so forth, that are available for sale in the
9 store?

10 A That is right, sir.

11 Q Now, in addition to the retail price, do these price tickets
12 also contain a code marking on them?

13 A As a rule.

14 Q Would you tell us what this code marking is?

15 A This is our cost of merchandise in letter code.

16 Q Would you tell us what this code specifically -- What
17 is the code that you use for letter marking?

18 MR. MC KEAN: I object. I do not see the relevancy.

19 HEARING EXAMINER LYNCH: The objection is sustained.

20 MR. EPSTEIN: I will ask the reporter to mark for
21 identification Commission's Exhibits 57, 58, 59, 60, and 61.

22 (The documents referred to were marked as Commission's

23 Exhibits 57, 58, 59, 60, and 61, for identification.)

24 By Mr. Epstein:

25 Q I want to invite your attention to what have been marked

60 1 for identification as Commission's Exhibits 57 through 60
2 and ask you: Can you identify these?

3 A These are invoices for merchandise.

4 HEARING EXAMINER LYNCH: Are they all invoices?

5 By Mr. Epstein:

6 Q Now, Mr. Ullman, on Commission's Exhibits 57, 58, and 59,
7 for identification, there are handwritten notations in the middle
8 of these invoices opposite the description of each of the pro-
9 ducts that are referred to on the invoice.

10 Do you recognize the handwriting on any of these documents?

11 A I can't say that I do.

12 Q Who receives the invoices in the store, Mr. Ullman?

13 A That might be anyone.

14 Q Who do they ultimately go to in the store?

15 A They ultimately go to the bookkeeper who makes the
16 entries in the books.

17 Q Are the invoices kept in one place in the store, all the
18 invoices?

19 A Generally speaking, yes.

20 Q Do you or Mr. Tash check each invoice to establish that
21 the merchandise so marked on the invoice was received?

22 A I would not say that either he or I perform that function.

23 Q What employees are responsible for that function, then?

24 A Any number of them.

25 Q Who specifically?

A From time to time, it may have been most anyone.

1 he gave you three times. Unless you can get more specific,
2 he is going to answer that way again.

3 MR. EPSTEIN: Apparently, I was not making it clear
4 that I was looking for the names.

5 By Mr. Epstein:

6 Q Let me ask specifically as to Exhibit 60.

7 Do you have a recollection of whether you handled that
8 invoice?

9 A I would have no recollection of whether or not I handled
10 an invoice that long ago, Mr. Epstein.

11 Q Mr. Ullman, can you tell me whether or not anyone other
12 than yourself and Mr. Tashoff, as you have just explained, is
13 responsible for marking the retail prices of your goods in the
14 store?

15 A Primary I am responsible for marking the retail prices.

16 HEARING EXAMINER LYNCH: For the purpose of the record,
17 is Mr. Tashoff and Mr. Tash one and the same person?

18 MR. EPSTEIN: Sometimes referred to as "Tash", but
19 his name is Leon Tashoff.

20 MR. MC KEAN: Correct, Your Honor.

21 By Mr. Epstein:

22 Q Referring specifically to Commission's Exhibit 57, for
23 identification, are the handwritten number notations there in
24 your handwriting?

25 A No, they are not.

1 Q Is the handwriting on Commission's Exhibit 58, for identi-
2 fication, your handwriting?

3 A No, it is not.

4 Q Is the handwriting on Commission's Exhibit 59 your hand-
5 writing, Mr. Ullman?

6 A No, it is not. Now, there are a few notations that are
7 mine. This figure 282 and 179, that is my handwriting -- that
8 is 379.

9 Q Now, inviting your attention to Commission's Exhibit 58,
10 for identification, Mr. Ullman, can you tell me what this notation
11 is opposite the name of the watches from the Bulova Watch Company?

12 The first is 1 DME. There is the handwriting 1 DME \$149.50.

13 Can you tell us what the handwritten notation is?

14 A The 1 DME is apparently a translation of the cost into
15 our code.

16 Q Would your answer be the same for the rest of the notations
17 that appear on that invoice?

18 A All those letters appear to be translations.

19 HEARING EXAMINER LYNCH: Do you know, Mr. Ullman?

20 You said "appear to be". Do you know or don't you

21 know?

22 THE WITNESS: I did not write them, Your Honor, but
23 the letters that Mr. Epstein has indicated are a translation
24 of those costs into our letter code, with one exception, and
25 that is the second one which does not appear to be a correct

1 translation.

2 HEARING EXAMINER LYNCH: as the manager of the busi-
3 ness, you are familiar with it sufficiently to know that?

4 THE WITNESS: Yes, sir.

5 HEARING EXAMINER LYNCH: Go ahead, Mr. Epstein.

6 By Mr. Epstein:

7 Q Now, Mr. Ullman, again referring to each of these exhibits
8 that I have asked you about, with the handwritten notations,
9 can you tell me if the handwritten notations are the handwriting
10 of Mr. Tashoff?

11 A I cannot.

12 Q You do not know whether it is his handwriting or not?

13 A No.

14 Q Mr. Ullman, do the employees in your establishment, other
15 than you and Mr. Tashoff, know the code that you use for your
16 merchandise?

17 A Some of them do.

18 Q How many of them do?

19 A I would not know.

20 Q All of them?

21 More than half of them?

22 A I would not say that all of them know, and I do not know
23 whether it would be more than half of them.

24 MR. EPSTEIN: I offer Exhibits 57 through 60 in
25 evidence.

1 HEARING EXAMINER LYNCH: Is there any objection?

2 MR. MC KEAN: Yes, Your Honor.

3 I suppose I should inquire.

4 HEARING EXAMINER LYNCH: All right, if you wish.

5 MR. MC KEAN: I should inquire of Mr. Epstein what the
6 purpose of the offer is.

7 MR. EPSTEIN: Two things, Your Honor, quite specif-
8 cally. If I can put the invoices in front of you for a minute?

9 The first is to show, as a matter of fact, the suppli-
10 ers of the goods to New York Jewelry, and what the description
11 of the merchandise is. And it denotes the cost price of the
12 merchandise. And No. 2, the handwritten notations on three of
13 the five invoices, Your Honor, you will note that there are
14 retail prices that have been marked in handwriting opposite
15 these items, and they, of course, are obviously to show the
16 retail price of those goods directly, vis-avis the cost to
17 respondent of this merchandise, as reflected on these invoices.

18 MR. MC KEAN: Mr. Epstein has not asked him about
19 that. He has not asked him if these are retail prices of the
20 goods. If he is offering these to show the retail price of
21 the goods mentioned on those things, I do not think he has
22 established anything close to that. If the offer is made to
23 show that these companies were suppliers, I have no objection
24 to that.

25 By Mr. Epstein:

1 Q Mr. Ullman, referring to Commission's Exhibit 59 for identi-
2 fication, can you tell me if the written notations with the
3 arrows leading to the cost price of the merchandise from the
4 Bulova Watch Company represent the retail prices that were
5 affixed on this merchandise for sale to the consuming public?

6 A I can't say that they are, Mr. Epstein.

7 Q Mr. Ullman, referring to Commission's Exhibit 58, I will
8 again ask you if the handwritten notations of the prices that
9 appear on this invoice for watches from the Bulova Watch
10 Company, next to the code price, represent the retail prices
11 that your company affixed to these watches for sale to the
12 consuming public?

13 A I can't say that that is what they are.

14 Q Mr. Ullman, coming to Commission's Exhibit 57 for identifi-
15 cation opposite the various items of merchandise which were
16 invoiced to you from A. Cohen and Sons Corporation, there
17 appears the handwritten figure \$59.50 opposite "Toaster" and
18 \$49.50 opposite "Steam Iron".

19 Can you tell me whether or not those were the retail
20 prices that were affixed to those goods when they were put
21 out for resale in your stock to the consuming public?

22 A No, I cannot.

23 MR. EPSTEIN: I will have to state at this point,
24 if we may, that although it was not the original intention of
25 counsel supporting the complaint to do this, we will have to now

1 By Mr. Epstein:

2 Q Commission's Exhibit 60 for identification, which is
3 Invoice No. 2025 from the Edward A. Waldman Company, to New York
4 Jewelry Company. Can you tell me what price your store sold
5 these watches for at retail?

6 A No, I could not.

7 Q Would there be a retail price tag on these watches that
8 would indicate price to the consuming public?

9 A If there are any watches in our store at the time they
10 would have a ticket affixed.

11 Q Or they would have if they were in the store at the time
12 this invoice was received?

13 A That is right.

14 Q Now, again referring to Commission's Exhibit 58 for
15 identification, Mr. Ullman, and starting at the top with the
16 watch as it is described in this Bulova Watch invoice, can you
17 tell me what the retail price of that watch was in your store?

18 A No, I could not.

19 Q Would that watch have carried the retail price tag on it?

20 A It would have.

21 Q You or Mr. Tashoff would have been responsible for having
22 placed that on there.

23 A It would have had a ticket on it.

24 Q I will ask you with reference to "Craftsman" watch; can
25 you tell me what the retail price of that watch would have been
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G. L. N. W. Washington, D. C.

1 your store?

2 A No, sir.

3 Q Would there have been a retail price on it?

4 A There would have been.

5 Q To save time, I will ask you as to the rest of the watches
6 that are noted on that Bulova invoice, Commission's Exhibit 58
7 for identification, would your answers be the same?

8 A They would.

9 Q You have no idea what the retail prices of any of those
10 goods would be?

11 A Not from referring to this invoice, no.

12 Q Now, referring to the Bulova Watch Company's invoice
13 for identification, Commission's Exhibit 59, I will ask if you
14 can tell me what the retail price was of the clock radio,

15 File No. 564, that is indicated as the first item on this
16 invoice? Can you tell me what the retail price of that was
17 in your store?

18 A I would not be able to, from this invoice, no.

19 Q And the handwritten notes are of no help to refresh your
20 recollection?

21 A No, sir.

22 Q If I asked you the same as to each and everyone of the rest
/23 of the items on that invoice, your answer would be the same?

24 A Yes.

25 Q As to each and every item, would there have been price

1 tickets on those items, as offered for sale?

2 A There would have been.

3 Q Reflecting the retail price of those goods?

4 A There would have been, yes.

5 Q Now, as to Commission's Exhibit 57 for identification,
6 the invoice reflecting certain items of small appliances that
7 were received by you from A. Cohen and Sons Corporation, would
8 you be able to tell me what the retail price of these goods
9 would be of the men's wallets, the first item listed on this
10 invoice?

11 A I would not.

12 Q Would you be able to tell me what the retail price of
13 the toaster which is the second item on this invoice, at a
14 cost of \$5.49 -- Could you tell me the retail price of that
15 item?

16 A I would not be able to.

17 Q Do the handwritten notes on that invoice refresh your
18 recollection?

19 A No.

20 Q Would any of those items -- would all of those items that
21 have been mentioned, or that are enumerated on that invoice,
22 have carried retail price tags as they were available to the
23 public?

24 A They would have.

25 Q Mr. Ullman, does your store give cash discounts?

A On occasions, we give discounts.

1 Q What occasions? Would you describe them for me?

2 A A piece of merchandise that has been in stock for a
3 period of time, we may offer for sale at a lesser price.

4 Q Do you have any other examples?

5 A There may be other occasions, but that one stands out in
6 my mind.

7 Q So then the retail price that would be represented by the
8 tickets on this merchandise would be the price at which this
9 merchandise would be sold by the New York Jewelry Company?

10 A That is right.

11 Q And in all these instances that you have indicated, Mr.
12 Ullman, what are your criteria for granting credit to people
13 who come into your store and wish to make purchases on credit?

14 A I do not exactly understand the question, Mr. Epstein.

15 Q Well, on what basis do you give a person who comes into
16 the store credit?

17 A There may be any number of bases for extending credit.

18 Q Because he looks nice?

19 MR. MC KEAN: I think the witness was continuing his
20 answer at that time and was cut off.

21 THE WITNESS: There are a number of reasons: Maybe
22 his previous record of payment or his presentation of other
23 accounts that he might have, that might have established, or
24 just the general basis of his application. Each application,
25 of course, is a separate one unto itself.

1 By Mr. Epstein:

2 Q Mr. Ullman, I want to ask you if you can identify this
3 document which is Exhibit A attached to the Commission's
4 complaint in this matter?

5 A This is a card that we used in the business.

6 Q And can you tell me who received this card, Mr. Ullman?

7 A This card was mailed to our customers and was from time to
8 time given out in front of the store.

9 Q To anyone who passed by?

10 A To passersby.

11 Q And this copy, as it appears here and as it appears as
12 a Commission's Exhibit annexed to the complaint, is that a
13 true copy of the card, white in color, that you have just
14 described?

15 A I would say that it is.

16 MR. EPSTEIN: Now, I will ask the reporter to mark
17 this as Exhibit 70 for identification.

18 {The card referred to was marked as Commission's
19 Exhibit 70, for identification.)

20 By Mr. Epstein:

21 Q Mr. Ullman, can you identify what I invite your attention
22 to, Commission's Exhibit 70, for identification?

23 HEARING EXAMINER LYNCH: You just discussed 70. What
24 are you going to do, offer 70?

25 I understand you just had a card marked 70.

1 MR. EPSTEIN: I wanted him to verify that Commission
2 Exhibit A attached to No. 70 that he now has in his hand. I
3 wanted to verify what is attached to the complaint. 70 is a
4 credit application card.

5 THE WITNESS: This is a credit application card and
6 ledger card.

7 By Mr. Epstein:

8 Q Now, I want to ask you specifically: First, on the back,
9 there is a statement which says "Application for Credit", and I
10 want to ask you if that is what you use to fill out for customers
11 who are making application for credit to you?

12 A It is.

13 Q Now, furthermore, on the card itself, Commission's Exhibit
14 70 for identification, there are some notations on the back
15 that indicate there are spaces to be filled in concerning
16 credit information. Can you explain to me whether you ever
17 used that?

18 A The form "Application for Credit" to which you just referred
19 was used prior to our using this form. This is just a previous
20 form to this one.

21 Q Now, you indicated that this is also a ledger card.

22 Do I understand that the face of Commission's Exhibit 70
23 is space which is used to make the payment notations for your
24 customers?

25 A That is correct.

1 Q And every customer with an account has one of these
2 ledger cards if there are amounts due and owing.

3 A The customer does not have it. This is our office record.

4 Q I mean your office does have for every customer one of
5 these records?

6 A That is right.

7 Q Now is there also, for every single one of the customers,
8 either the attachment of the application for credit, or the
9 notation made on the back of the application for credit?

10 A To say that we have it for everyone would be a very broad
11 statement. It is our practice to get such an application for
12 credit on each customer, yes, sir.

13 Q But in either case, it would either have been on the back
14 of the ledger card that is kept in your office or would have
15 been contained on the card, the information.

16 A That is correct.

17 Q And so it would accompany the ledger card of the account
18 of the person at all times?

19 A That is right.

20 Q And these are kept in the regular course of business by
21 New York Jewelry?

22 A That is right.

23 MR. EPSTEIN: I offer Commission's Exhibit 70 in
24 evidence.

25 MR. MC KEAN: No objection.

1 offer to extend credit; when it was given out to people out
2 in front of the store, it was also an offer to extend credit.

3 Q Mr. Ullman, this portion that is shown in Exhibit A, the
4 lower left-hand portion with a dotted line, if I am not mis-
5 taken, isn't that detachable from the physical card?

6 It is perforated, so it can be detached therefrom?

7 A It is.

8 Q Now, it states on the credit card the fact that you extend
9 credit to anybody who walks into your store with one of these
10 cards.

11 A If they meet the qualifications, yes.

12 Q Mr. Ullman, what credit checks do you make on these
13 people who come in seeking credit for purchases?

14 A We do a number of things: verify the information they have
15 given us as to their place of residence and their place of,
16 employment, check them through our files, that is, the files
17 of our accounts, to be certain whether or not they have had
18 accounts with us before, and endeavor to obtain references
19 from any of the stores or other places that they may give as
20 places where they have had previous credit, and we maintain
21 a file of cards that represent garnishments filed with the
22 court, and we check them through there, to see if there have been
23 any garnishments filed against them.

24 Q Are you finished?

25 A Yes, sir.

1 (The documents referred to, heretofore marked
2 for identification as Commission's Exhibits 71, 72, and
3 73, were received in evidence.)

4 By Mr. Epstein:

5 Q Now, in your court suits, can you tell us what percentage
6 of the suits are successful in a recovery of the amount due
7 and owing to New York Jewelry Company?

8 A I would not be able to say.

9 Q Mr. Ullman, how does your store establish the carrying
10 charges that are stated to the customer for merchandise that
11 they buy on credit?

12 A Currently, we are charging 1-1/2 per cent per month on
13 the outstanding balance.

14 Q Has that been the manner in which you have operated for
15 the last five years?

16 A Oh, no.

17 Q How long has it been since you have been charging 1-1/2
18 per cent per month on the unpaid balance?

19 A I could not say offhand.

20 Q I want to invite your attention to Commission's Exhibit

21 66 which is the contract for Arthur Pratt who paid on time.

22 Can you tell me what the carrying charges were for Mr.
23 Pratt's purchase?

24 A This contract states that the carrying charge --

25 HEARING EXAMINER LYNCH: What did he buy?

1 THE WITNESS: This is optcal, \$17.

2 HEARING EXAMINER LYNCH: Go ahead.

3 THE WITNESS: This states that the carrying charge
4 is 1-1/2 per cent per month on the unpaid balance compounded.

5 By Mr. Epstein:

6 Q Can you show me where it states that in the contract,
7 Mr. Ullman?

8 A It states it in two places: Carrying charges 1-1/2 per
9 cent per month on the unpaid balance, plus carrying charge of
10 1-1/2 per cent per month on the unpaid balance.

11 Q And on this contract for Mr. Pratt, for these eyeglasses,
12 other than the statement in printing that appears thereon, there
13 is no computation of the charges for that purchase; is that
14 right?

15 A No.

16 Q Now, directing your attention --

17 HEARING EXAMINER LYNCH: When you say "No charges",
18 what do you mean?

19 MR. EPSTEIN: There were no charges computed on the
20 contract for the purchase that was given on credit terms.

21 By Mr. Epstein:

22 Q Now, Mr. Ullman, directing your attention to Commission's
23 Exhibit 68, which is the conditional sales contract for a used
24 portable TV set, to Arthur ^{Pratt} Taylor, can you tell me what the
25 carrying charges were computed on that contract?

1 A On this contract, this is apparently a contract that we
2 use, prior to the one that you just questioned me about, and
3 on this particular contract the carrying charges were computed
4 as \$8.43.

5 Q How were those carrying charges computed, that \$8.43?

6 A I can't say from memory.

7 Q How does your store compute the carrying charges?

8 A Presently, we are charging 1-1/2 per cent on the unpaid
9 balance, Mr. Epstein.

10 Q Well, taking this contract that was dated April 16, 1966,
11 which is a little less than a year ago, Commission's Exhibit
12 68, which is the conditional sales contract of a little less
13 than a year ago, can you tell me how you computed the carrying
14 charges on the account that you had at that time?

15 A In this instance, it was computed to be \$8.43.

16 Q How was the computation made?

17 What was the basis upon which this customer --

18 A I can't say from memory how we were doing it at that time.

19 Q I want to direct your attention --

20 HEARING EXAMINER LYNCH: Before you get into that,
21 let's go back to this one exhibit, (66)

22 Will you question the witness about the purchase
23 price of the eyeglasses at \$17 and the interest at 1-1/2 per
24 month compounded?

25 According to the witness' statement, I notice in
147

1 referring to the exhibit, Mr. Ullman, there are no charges
2 listed there at all for carrying charges. It is merely \$5
3 a week until paid.

4 Was there any carrying charge on that?

5 Can you tell? Or was that just handled as a cash deal
6 and no carrying charges charged, or how do you explain that?

7 THE WITNESS: At the time of the sale on this one,
8 Your Honor, there were no carrying charges charged. The carry-
9 ing charges were to be computed over the life of the account,
10 that is, if the customer paid, let us assume, \$5 the first
11 month, the carrying charges would have then been computed on
12 whatever the remaining balance was.

13 HEARING EXAMINER LYNCH: And, in order to try to
14 understand more clearly, what your situation is, let me ask you
15 if you will look at Commission's Exhibit 1 and explain to me,
16 if you can, the execution of that conditional sales contract
17 which, in light of the questions I asked you concerning Commis-
18 sion's Exhibit 66 which you have just explained, regarding the
19 \$17 plus carrying charge of 1-1/2 per cent with no indication
20 on Exhibit 66 that any carrying charge was computed at the
21 time of the execution of the contract. It is left blank, and
22 you are presently referring to Commission's Exhibit 1 which
23 seems to me, from looking at it generally, that maybe you can
24 explain this more clearly, very specifically, with respect to
25 the cost to the purchaser and the executor of the contract:

1 there anything in the case of Commission's Exhibit 1, the
2 contract was filled out, listing all the charges at least on
3 the face of the contract, and in Exhibit 66 nothing but \$17 for
4 the purchase of merchandise.

5 Is there any explanation for that?

6 THE WITNESS: Your Honor, we changed the form at some
7 point.

8 HEARING EXAMINER LYNCH: Would you look at this,
9 at those two exhibits?

10 THE WITNESS: I have them in hand.

11 HEARING EXAMINER LYNCH: Glancing through them, they
12 look identical to me, and specifically the areas you referred
13 to, concerning the amount of charges, the carrying charges,
14 the totals, the amount to be paid per month or per week, what-
15 ever the situation might be, and I believe if you will look at
16 them carefully you will find that both contracts are the same.
17 They are both in 1966, one I believe in September and one in
18 March of 1966.

19 THE WITNESS: Yes, Your Honor.

20 HEARING EXAMINER LYNCH: I did not read the writing.
21 I am not referring to the writing; I am referring to the top
22 portion which refers to the cost to the customer of the purchase
23 by way of carrying charges, credit charges, or whatever you wish
24 to call them.

25 THE WITNESS: These are two different forms. The

1 form used in March 1966 set out a specific amount of carrying
2 charges based on the life of the contract. The contract in
3 September, 1966, is a different form at the top, Your Honor,
4 and expresses that the time price is the cash price plus a
5 carrying charge of 1-1/2 per cent per month to be computed
6 on the unpaid balance, as it says here, on the unpaid balance.

7 MR. MC KEAN: Will you show the Judge where you find
8 those, Mr. Ullman?

9 MR. EPSTEIN: I think we are back to Commission's
10 Exhibit 68, the used television conditional sales contract
11 for Mr. Arthur Pratt, and we are at the point where I am
12 trying to find out what was the computation of carrying
13 charges, what was the formula for the computation of the
14 carrying charges on this contract.

15 MR. MC KEAN: I object to the question.

16 HEARING EXAMINER LYNCH: 68?

17 MR. EPSTEIN: Yes, sir.

18 MR. MC KEAN: I am asking for clarification.

19 Are you asking what percentage was applied to the
20 sales price in order to get the carrying charges?

21 Is that the point of the question?

22 MR. EPSTEIN: I do not know. What I am trying to
23 find out is: What was the computation that was done to arrive
24 at this carrying charge?

25 What was the basis for the carrying charge?

1 MR. MC KEAN: Are you asking for the numerical value
2 of the interest charged or the carrying charges assessed, comput-
3 ing the numerical value?

4 MR. EPSTEIN: Yes.

5 MR. MC KEAN: I submit that if you will give Mr.
6 Ullman a pencil and paper he can work it out. I am not sure
7 what you are asking.

8 HEARING EXAMINER LYNCH: Why don't you ask the witness
9 how it was arrived at?

10 MR. EPSTEIN: That is what I am asking.

11 By Mr. Epstein:

12 Q How was the carrying charge arrived at in Mr. Pratt's
13 contract, Commission's Exhibit 68?

14 A As I previously stated, from time to time, different
15 methods of computation were used. I am testifying only from
16 memory at this point.

17 HEARING EXAMINER LYNCH: Let's stop right there.
18 Forget about memory for a moment. You have, in front of you,
19 a contract. It is Commission's Exhibit 68. Now, everything
20 pertaining to the execution of that sale is contained in the
21 contract.

22 What Mr. Epstein is asking you to do is to tell him
23 how you, or whoever prepared that contract, reached the figures
24 that are set forth in the contract. We do not care what
25 you did before or after, just that contract.

1 THE WITNESS: Yes, Your Honor.

2 HEARING EXAMINER LYNCH: That is what we want to know.

3 THE WITNESS: As I recall, the life of the contract,
4 in accordance with the terms arranged was figured and then a
5 figure was computed which represented a percentage on the
6 declining balance.

7 HEARING EXAMINER LYNCH: You will have to be a little
8 more specific. Let's start from the beginning.

9 THE WITNESS: All right.

10 HEARING EXAMINER LYNCH: What was the total purchase
11 price of the merchandise?

12 THE WITNESS: The total cash price was \$106.60.

13 HEARING EXAMINER LYNCH: Now, where did you go from
14 there?

15 THE WITNESS: This contract was to be paid at the
16 rate of \$7 every two weeks. This would have represented \$14
17 a month.

18 HEARING EXAMINER LYNCH: Now, when you reach that
19 plateau, what do you do from there?

20 You know that is going to be the payment, if the
21 contract is carried out.

22 THE WITNESS: If it is carried out properly, that is
23 correct, Your Honor.

24 At that point, we have a table from which we determine
25 that the carrying charge would be, based on that declining

1 balance, figured at the rate of, I assume, 1-1/2 per cent
2 per month.

3 HEARING EXAMINER LYNCH: Does the contract call for
4 1-1/2 per cent?

5 THE WITNESS: The contract calls for this specific
6 carrying charge, and then in the body of the contract, it calls
7 for a carrying charge after maturity of 1-1/2 per cent per month
8 on the unpaid balance. That is, this would be the carrying
9 charge if the account were paid properly at its maturity. Subse-
10 quent to the maturity date of this contract, any balance
11 remaining would be subject to a carrying charge of 1-1/2
12 per cent per month.

13 HEARING EXAMINER LYNCH: How do you arrive at the
14 figure, based upon the terms of the contract, that the contract
15 would run, being paid at \$14 a month for a certain number of
16 months?

17 What mathematical calculations did you exercise in
18 order to come up with the figure, to show the charges that
19 were to be added to the purchase price of the item?

20 Do you have a scale, a chart?

21 THE WITNESS: We did at the time we computed it, Your
22 Honor, but we have not been using this form or this format. I
23 doubt that it is available now.

24 HEARING EXAMINER LYNCH: Do you mean to tell me, after
25 being there as many years as I understood, that you can't

1 look at that contract and know how those prices are arrived
2 at, as manager of the store?

3 THE WITNESS: This is my memory as to the format that
4 we were using in April of 1966.

5 HEARING EXAMINER LYNCH: All I want to talk about
6 in this contract is the figures on it. You are telling me
7 now that you can't tell me what the carrying charges are, and
8 how they were figured. Is that what you want me to understand?

9 Tell me what this means to you.

10 You are not answering my question, and that is what
11 I am trying to get at. If you can answer my question --
12 If you arrived at the carrying charge by taking the money owed,
13 and then you took six months and figured five per cent and ended
14 up with \$15 or \$20 or \$30, and said that that was how you got
15 the figure, you would be answering my question. You can do
16 that, can't you?

17 THE WITNESS: I can with pencil and paper.

18 HEARING EXAMINER LYNCH: What would be the mathe-
19 matical formula?

20 Can you tell me that without a pencil and paper?

21 THE WITNESS: All right, sir.

22 This customer at the date of this sale owed \$106.60.
23 That was the cash price of the merchandise. Assuming that the
24 first month he paid \$14, he would have owed \$106.60 less \$14,
25 and the carrying charge for the first month was figured on that

1 amount.

2 The next month, whatever that balance would have been -

3 HEARING EXAMINER LYNCH: How do you figure the carry-
4 ing charge for that first month, what percentage?

5 THE WITNESS: 1-1/2 per cent.

6 HEARING EXAMINER LYNCH: All right. Go ahead.

7 THE WITNESS: The next month, if it was reduced by
8 \$14, the balance would be -- the carrying charge would have
9 been figured at 1-1/2 per cent. on whatever that resultant
10 balance was.

11 Now, at the time that we were using this method of
12 computing carrying charges, we had tables prepared that gave
13 us that answer of \$8.43.

14 HEARING EXAMINER LYNCH: So, if a person owed \$100
15 and was paying \$10 a month, immediately you would know how
16 much to add for the carrying charge; is that right?

17 THE WITNESS: That is right.

18 HEARING EXAMINER LYNCH: Is there a chart to do that?

19 THE WITNESS: Yes, Your Honor.

20 HEARING EXAMINER LYNCH: Go ahead.

21 By Mr. Epstein:

22 Q Do you have that chart on the premises of the New York
23 Jewelry Company?

24 A I would doubt that, Mr. Epstein. We no longer use that
25 system, and I would doubt it.

1 Q Some of these people are still paying on these contracts
2 that were executed approximately a year ago, some of them nine
3 months ago.

4 A I would assume that they are.

5 Q But you do not have the charter available any more, through
6 which you made these computations of their carrying charges?

7 MR. MC KEAN: I object to that as being argumentative.

8 MR. EPSTEIN: I am asking whether he does or does not.

9 HEARING EXAMINER LYNCH: He has already said he did
10 not.

11 MR. EPSTEIN: I think, Your Honor, that it would be
12 appropriate if we can have the charts produced here,

13 HEARING EXAMINER LYNCH: I think it would be, too, if
14 the witness could produce them. He said he did not have them.

15 MR. MC KEAN: If we can find them, we will be happy to
16 produce them. The chart was used to compute fixed carrying
17 charges that were written into the contract. It is not neces-
18 sary to have the chart now. However, we would be happy to
19 produce them.

20 HEARING EXAMINER LYNCH: I would like to see them if
21 you have them.

22 By Mr. Epstein:

23 Q I want to direct your attention to Commission's Exhibit
24 43 which is a contract for Synithia Gray for optical services
25 in which she paid for optical services \$59.50 as an unpaid
balance, and the carrying charges were computed at \$10.65 for

1 her payment of \$5 a week. I would like you to tell me how
2 the carrying charges were computed on Synithia Gray's con-
3 tract.

4 A This was a form. This was a method that we used prior to
5 the method that I just stated.

6 Now, at this time, this was in the contract dated
7 January 8, 1966, and at that time we figured a flat carrying
8 charge. In this instance, it appears to be 20 per cent of the
9 purchase price.

10 Q Was the carrying charge at that time, 20 per cent of the
11 purchase price?

12 A Yes.

13 Q Now, referring to Commission's Exhibit 42 --

14 MR. MC KEAN: May I interrupt this line of question-
15 ing?

16 I would like to have an opportunity to take a look
17 at this contract before we continue. I will ask Mr. Ullman to
18 direct his attention to the figures again and think it over
19 and consider his answer.

20 HEARING EXAMINER LYNCH: You can cross-examine.

21 MR. EPSTEIN: Yes, that is my point.

22 By Mr. Epstein:

23 Q Now, Mr. Ullman, directing your attention to Commission's
24 Exhibit 42, which is a contract of January 8, 1966, signed by
25 Synithia Gray for what is stated in the contract as a new

1 wedding set. The selling price is \$150. Will you tell me
2 how the carrying charge which is on \$154.50 for the wedding
3 set -- that is, the \$150 plus tax -- the carrying charges of \$27
4 on this \$154.50 contract were arrived at by the New York Jewelry
5 Company?

6 A At this time, again, a flat carrying charge was made at the
7 time of purchase, but I can't, from this contract, determine
8 just what the percentage was.

9 Q Well, Mr. Ullman, let me see if we can straighten this
10 out.

11 In the first instance, you explained at that time you
12 were using a carrying charge of 20 per cent. This is a contract
13 dated the same day. There was a different percentage computed
14 for the carrying charge than today, for a different purchase.
15 Is that what you are telling me?

16 A This doesnot represent that percentage.

17 Q What does it represent, Mr. Ullman?

18 A This would amount to approximately 18 per cent, and
19 this may have been the percentage figure that we were using
20 at that time, rather than 20 per cent.

21 MR. MC KEAN: I object to the line of questioning.

22 I know you said I can cross-examine, but I think it
23 is an exercise in futility to waste time when we can redo the
24 percentage on this one. Mr. Epstein leaped gladly on the
25 testimony that it was 20 per cent. Let him calculate it and

1 see what it is.

2 HEARING EXAMINER LYNCH: Ask the question.

3 MR. MC KEAN: May I, Your Honor?

4 HEARING EXAMINER LYNCH: Yes.

5 MR. MC KEAN: Would you take a look first at the con-
6 tract of Synithia Gray Washington, Exhibit 43, and calculate
7 out what the percentage of the carrying charge was?

8 HEARING EXAMINER LYNCH: Just to keep the record,
9 Mr. Epstein, is this the contract that was inquired into when
10 the witness answered 20 per cent?

11 MR. EPSTEIN: Yes, sir.

12 HEARING EXAMINER LYNCH: All right.

13 THE WITNESS: The carrying charges are calculated
14 to be --

15 HEARING EXAMINER LYNCH: Wait a minute. Let us get
16 back on the record so we are straight. Now, Mr. Epstein origi-
17 nally asked you a question concerning Exhibit 43.

18 MR. EPSTEIN: Commission's Exhibit 43.

19 HEARING EXAMINER LYNCH: Mr. Epstein asked you with
20 respect to the carrying charges on Commission's Exhibit 43, and
21 my recollection is you stated they were 20 per cent.

22 THE WITNESS: They figured out to be nearly 18 per
23 cent. That would be \$10.71. They were stated at \$10.65 --
24 a 5-cent difference there.

25 HEARING EXAMINER LYNCH: Have you finished?

1 MR. MC KEAN: I think so.

2 HEARING EXAMINER LYNCH: Go ahead, Mr. Epstein.

3 You had a question with respect to the second con-
4 tract executed the same day.

5 MR. EPSTEIN: Yes.

6 By Mr. Epstein:

7 Q As to how the carrying charges were computed for that
8 contract, executed the same day,

9 A This figures most nearly to be 18 per cent. 18 per cent
10 would be \$26.80. In this instance, \$27 was charged as a
11 carrying charge.

12 Q Let me get it straight. From the computation you made
13 in your notebook what was the carrying charge at 18 per cent
14 that you computed on the balance due on the wedding set,
15 \$154.50?

16 A \$26.80, at 18 per cent -- \$27 was charged.

17 Q I want to direct your attention to Commission's
18 Exhibit 62, Mr. Ullman, which is for a used television set
19 purchased on May 6, 1966 by Mrs. Alfreda Stubbs and the
20 total price of the television set was \$174.90. You computed
21 carrying charges of \$18.60 which is noted there on the
22 contract

23 Would you tell me how you arrived at those carrying
24 charges, Mr. Ullman, please?

25 MR. MC KEAN: I would like to object to any

1 further questions along this line. We have been going into
2 this at great length. The complaint charges that, in effect,
3 they do not disclose the amount of credit charges, and it is
4 plain and clear that they are disclosed in the same exact
5 amount.

6 HEARING EXAMINER LYNCH: I wonder how long this is
7 going on?

8 How much have you got there, Mr. Epstein?

9 This is getting cumulative.

10 You can show the witness any number of contracts.

11 I think you have made your point concerning that.

12 How many more do you have?

13 I mean, there is no point in going on.

14 MR. EPSTEIN: I have a different line of inquiry,
15 Your Honor, that I would like to pursue on this.

16 I would like to have the reporter mark as Commission's
17 Exhibit 74 for identification, a conditional sales contract
18 for Mr. Eley Freshley.

19 Commission's Exhibit 75 is a yellow prescription
20 blank for Mr. Freshley, and Commission's Exhibit 76 is another
21 prescription blank for Mr. Freshley.

22 Commission's Exhibits 77 and 78 are Dal-Tex Optical
23 invoices for the same individual.

24 (The documents referred to were marked as Commission's
25 Exhibits 74 through 78, for identification.)

1 Q For the record, will you state your name and address?

2 A My name is Zachary Ephraim, and I am an optometrist with
3 offices at 816 15th Street, Northwest. I reside at 8600
4 Bradmoor Drive, Bethesda, Maryland.

5 Q What is your occupation?

6 A I am an optometrist.

7 Q Would you describe briefly what an optometrist is?

8 A An optometrist is an individual who specializes in the
9 examination of eyes for correction by glasses, prescribing
10 visual training and contact lenses.

11 Q How long have you been an optometrist?

12 A 19 years.

13 Q Dr. Ephraim, starting with your undergraduate education,
14 will you describe your professional training?

15 A I graduated from St. Francis College in 1938 and
16 Columbia University School of Optometry in 1945 -- I am sorry,
17 1947 was when I graduated.

18 Q In your occupation, do you also sell eyeglasses?

19 A Yes, sir.

20 Q How long have you been in the profession of optometry
21 in the District of Columbia?

22 A 18 years.

23 Q Have you also been selling eyeglasses in the District
24 of Columbia for 18 years?

25 A Yes, sir.

1 Q Could you describe for us what positions you hold in
2 professional societies?

3 A I am president of the Board of Examiners of Optometry
4 in the District of Columbia.

5 I am first vice president of the District of Columbia
6 Optometric Society.

7 I am a trustee of the D. C. Optometric Center, a free
8 clinic for indigent patients, and also a trustee in the
9 Vision Career Service, which is a prepaid health plan for
10 eye care.

11 Q Could you give us a brief description of the functioning
12 of the Board of Optometric Examiners?

13 A The Board of Optometric Examiners approves and acts upon
14 applications of new licensees, gives examinations, marks and
15 grades them and either approves or disapproves their
16 licensure.

17 Q Could you also give us a description of the Optometric
18 Society?

19 A The Optometric Society is an organization of professional
20 optometrists in the District of Columbia.

21 Q How many members belong to the society?

22 A 44.

23 Q What percentage of the total number of optometrists
24 is that?

25 A About 52 per cent.

1 Q Dr. Ephraim, are you familiar with the prices prevailing
2 in the District of Columbia trade area for eyeglasses and pro-
3 fessional optometrist's services in connection therewith?

4 A Yes, I am.

5 Q How familiar with these prices are you?

6 A From personal experience and speaking with other practi-
7 tioners, and recently we conducted a survey of all the
8 practitioners in our organization because of the importance
9 of this factor in Medicare and Medicaid.

10 We have to present these facts and figures to the District
11 of Columbia Public Health Service, and we made a survey with
12 them last month.

13 Q Could you describe this survey in a little more detail?

14 A Questionnaires were sent to all of the members of the
15 society. 28 of them were returned. Five more inquiries
16 were made by telephone, so they had, actually, 33 replies
17 out of 44 applications.

18 Q Have you had access to those results?

19 A Yes, I have.

20 Q Do you know those results?

21 A Yes, sir.

22 Q Doctor, I wonder if you would tell us what comprises the
23 patient's cost for a pair of glasses.

24 A The total cost of a pair of glasses generally consists of
25 a professional fee plus the cost of materials, the cost of

1 lenses, frames, and insert areas, service fees for visual
2 training for contact lenses.

3 Q Are costs usually broken down for the patient?

4 A There is a difference of opinion. I would say about 50
5 per cent of the men break down the cost and 50 per cent do not.

6 Q Would you say that the costs are the same in either case?

7 A Very close, yes, sir.

8 Q Could you tell us how you obtain lenses ground to proper
9 prescription for your patients

10 A Well, we have our own lab in which we do -- We service
11 our own stock lenses. Lenses that are out of stock range, we
12 sent to local labs, wholesale labs.

13 Q Does the price of a pair of glasses vary depending upon
14 the prescription?

15 A Yes, it does.

16 Q What is the extent of the variation?

17 A The cost to the patient: The cost to the patient for
18 lenses alone could run \$10 for single vision or as high as \$60
19 for bifocals or trifocals.

20 Q Would you be able to tell us the patient's cost in this
21 trade area for glasses and frames, if I were to show you a sup-
22 plier's charges for grinding lenses and supplying frames

23 A Yes, sir, I could.

24 Q I show you Commission's Exhibit 77, Dal-Tex Optical invoice
25 for Eley Freshley. Would you study that invoice, Doctor, and

1 By Mr. McKean:

2 Q Dr. Ephraim, have you ever seen the glasses or lenses
3 referred to on that invoice?

4 A No, sir, I have not.

5 Q Are you basing your opinion as to prices, or any opinion
6 you may form, and so forth, primarily on the survey that you
7 mentioned a few moments ago?

8 A On my personal experience.

9 Q I said: Are you basing it primarily on the survey?

10 HEARING EXAMINER LYNCH: His answer was that he was
11 basing it on personal experience.

12 By Mr. McKean:

13 Q Not on the survey. Is that correct?

14 A If I may interject? My personal experience and the survey
15 are very close. I would say there is not a dollar's difference
16 in any charge between the survey and my personal experience.

17 Q But it is important to me to know which it is that you
18 are basing your opinions on.

19 HEARING EXAMINER LYNCH: Can you answer the question,
20 Doctor? I think he already testified -- he said both.

21 THE WITNESS: Yes, sir, and the answer is the same
22 in both cases.

23 By Mr. McKean:

24 Q Doctor, how many pairs of eyeglasses have you bought in the
25 last year from other optometrists?

1 A I have not bought any from optometrists in the past year.

2 Q Have you been in any other optometrists' offices or shops
3 in, say, the last year?

4 A Yes, sir, I have.

5 Q Whose have you been in?

6 A I have been in Dr. Haupt's office. We have a program of
7 self-aid, when a man was sick. I was in his office when he was
8 sick. I have been in Dr. Warren's office. I guess that would
9 be the ones I have been in.

10 Q You have been in the offices of --

11 A Two other optometrists within the last year.

12 Q Within the last year. Let's take it back two years.

13 HEARING EXAMINER LYNCH: Let's not carry the voir
14 dire too far. I think you have gone into the point of whether
15 he is qualified to answer the question. Any further questions,
16 I think, Mr. McKean, you can ask on cross-examination.

17 Now, let's go back and find out, Miss Reporter, what
18 the question was that Mr. Gross put to the witness with
19 respect to the documents he has in his hands?

20 Will you read that, please?

21 (The record was read by the reporter as follows:

22 "Question: I ask you study carefully and tell me if
23 you could give me your opinion.

24 "Answer: Yes, I can.

25 "Question: What is your opinion?"

1 HEARING EXAMINER LYNCH: Can you answer that ques-
2 tion?

3 THE WITNESS: Yes, sir.

4 MR. MC KEAN: I object to his giving an opinion,
5 on the ground that he is not qualified to give an opinion.
6 He has told me, on what little voir dire we had that he had
7 been in the shop of only one or two other ones. I am sure he
8 has other contacts, but I do not know whether they talked
9 price all day long. He has never seen this particular pair
10 of glasses or the material covered by that invoice.

11 Any opinion he might have is apparently based on
12 a survey which is not produced, has not been offered in
13 evidence.

14 I do not think he has any opinion on it.

15 HEARING EXAMINER LYNCH: Mr. Gross, with respect to
16 his own opinion -- and leave the survey out, because if you
17 do not you will have to bring the survey in -- do you want to
18 qualify your question?

19 MR. GROSS: May I first ask him if he has the survey
20 with him?

21 THE WITNESS: No, sir, I do not.

22 DIRECT EXAMINATION -- resumed
By Mr. Gross:

23 Q Do you have an opinion as to what your own price for this
24 pair of glasses would be?

25 A Yes, sir.

1 Q What would that price be?

2 A \$9.

3 MR. MC KEAN: May I have it clearly understood,
4 if the question was what the witness would charge, not what
5 others would charge.

6 HEARING EXAMINER LYNCH: That is what the question
7 was. Go ahead, Mr. Gross.

8 By Mr. Gross:

9 Q Doctor, as to that; same invoice, can you give me your
10 opinion, based on your own personal knowledge, excluding the
11 results of the study, as to what the prevailing trade area
12 price would be?

13 MR. MC KEAN: I object. That is the same question
14 he asked before, and you sustained my objection.

15 HEARING EXAMINER LYNCH: I sustained your objection
16 with respect to the survey that was referred to, which was not
17 available.

18 The objection is overruled. Answer the question.

19 MR. MC KEAN: Before you continue --

20 HEARING EXAMINER LYNCH: Your objection is noted.

21 Answer the question, if you can.

22 THE WITNESS: Yes, sir, the prevailing trade price
23 for this would be \$9.

24 HEARING EXAMINER LYNCH: This is your opinion, having
25 been in the business for the past 18 or 19 years?

1 THE WITNESS: Yes, sir.

2 HEARING EXAMINER LYNCH: Go ahead and ask the next
3 question.

4 By Mr. Gross:

5 Q I show you Commission's Exhibit 81 which is a Dal-Tex
6 invoice for J. L. Dennard.

7 Would you study that invoice, and I ask you if you can
8 give an opinion as to what the prevailing trade area price
9 for that optical service would be, based on your own personal
10 experience, excluding the results of a survey?

11 A Yes, sir.

12 MR. MC KEAN: I am going to object again. I do not
13 see how he can exclude the results of this survey. I think
14 Mr. Gross is exercising us here in a sort of wonderland phantasy
15 world.

16 HEARING EXAMINER LYNCH: The objection is overruled.
17 Answer the question.

18 By Mr. Gross:

19 Q Would you give us your opinion?

20 A \$24.

21 Q Can you give us an opinion as to what your price would be?

22 A \$24.

23 Q I show you Commission's Exhibit 85 which is the Dal-Tex
24 invoice for Richard Cavanaugh?

25 Would you study that invoice, Doctor?

1 Would you tell me if you can give your opinion
2 as to what the prevailing trade area price for those glasses
3 would be, based on your own experience, excluding the results
4 of the survey?

5 HEARING EXAMINER LYNCH: Let's leave the results
6 of the survey out.

7 That was in an objection that I overruled.

8 Let's leave it out of the record.

9 The witness is qualified, after 19 years, to testify
10 to what he knows.

11 THE WITNESS: \$28.

12 By Mr. Gross:

13 Q Can you tell us what your own price would be?

14 A \$28.

15 MR. MC KEAN: Would you tell me the name of that
16 person?

17 MR. GROSS: Richard Cavanaugh.

18 By Mr. Gross:

19 Q I show you Commission's Exhibit 87, Dal-Tex Optical
20 invoice for Rosa Wesley, and ask you to study that invoice
21 and tell me if you can me your opinion as to what the prevailing
22 trade area price for that service would be.

23 A Yes, sir.

24 Q What would that be, Doctor?

25 A About \$32.

1 Q What would your own price be?

2 A \$30 for this.

3 Q I show you Commission's Exhibit 90, which is a Dal-Tex
4 invoice for James Crowder, and ask you to study that and tell
5 me whether or not you can give me your opinion as to what the
6 prevailing trade area cost for that pair of glasses would be.

7 MR. MC KEAN: I am going to ask that that question
8 be clarified.

9 Mr. Gross used the word "costs". What is he referr-
10 ing to?

11 MR. GROSS: The prevailing retail price in the trade
12 area for that optical service.

13 THE WITNESS: It would be \$24.

14 By Mr. Gross:

15 Q What would your own charges be?

16 A \$24.

17 HEARING EXAMINER LYNCH: In the previous question
18 Mr. Gross asked you what the prevailing price would be and
19 you said \$32, and then he asked you what your price would be,
20 and you said \$30. Is that correct?

21 THE WITNESS: Yes, sir.

22 HEARING EXAMINER LYNCH: Go ahead.

23 By Mr. Gross:

24 Q I show you Commission's Exhibit 95 which is an optical
25 invoice for Charles Logan and I ask you to study the invoice

1 and tell me if you can give me your opinion as to what the
2 prevailing retail price in the trade area would be for that
3 optical service.

4 A \$28.

5 Q What would your own price be?

6 A \$28.

7 Q I show you Exhibit 100, Commission's Exhibit 100, Dal-Tex
8 invoice for Gus Ashton, and I ask you to study it and tell me
9 if you can what the prevailing retail price in the trade area
10 would be for that optical service.

11 A I am not familiar with that frame. I could not answer.

12 Q I show you Commission's Exhibit 103, Dal-Tex invoice for
13 Etta Calloway and ask you to study it and tell me if you can
14 what the prevailing retail price in the trade area would be.

15 A \$26. This is for lenses only, however. That is her own
16 frame.

17 Q Doctor, I will ask, you know, if you recall whether you had
18 occasion to examine the eyes of Minnie Alice Henry.

19 A Yes, sir, I did.

20 Q Would you describe how that examination came about?

21 A Yes, sir. One Saturday morning when I was having break-
22 fast at the Shoreham Drug Store, the manager of the drug store
23 said he was concerned about an employee of his who had just
24 purchased two pairs of glasses.

25

comfortably; with merely a routine examination and upon completion of the examination I saw no refractive error that would require correction.

Q Doctor, I now show you Commission's Exhibits 34 and 35, and ask you if you recognize them?

A Yes, sir.

Q What are they?

A These were the two pair glasses that Miss Minnie Henry showed me and said that they were from the New York Jewelry Company.

Q Did you examine those glasses?

A Yes, sir.

Q As a result of your examination, Doctor, could you give us an opinion as to the retail sales price for these glasses in the trade area?

A Yes, sir.

Q What would that be?

A For both pair, \$46.

Q That is a total of \$46?

A Yes, sir.

Q Could you break that down?

A Yes, sir. The frames would retail in this area for about \$10 apiece. The white lenses would probably retail for \$12 and the colored for \$14.

Q Doctor, would you have prescribed eyeglasses for Miss

1 Henry?

2 A No, sir, I would not have.

3 Q Doctor, do the eyeglasses for Miss Henry have a correction
4 in them?

5 A Yes, sir, they do.

6 Q I show you Commission's Exhibit 40, the eyeglasses of one
7 James Edward Freeman, and ask you if you have seen those before.

8 A Yes, sir, I have.

9 Q How did you happen to see these?

10 A You showed these to me in my office last Friday.

11 Q Did you examine the classes at that time?

12 A Yes, sir.

13 Q Did you reach an opinion as to the retail sales price
14 for that pair of glasses in the trade area?

15 A Yes, sir.

16 Q What is that opinion?

17 A \$22.

18 Q What would your own price have been, Doctor?

19 A \$22.

20 Q Doctor, I show you Commission's Exhibits 27, 28, and 29,
21 the eyeglasses of Roland Taylor. Have you had occasion to
22 examine those glasses in the past?

23 A Yes.

24 Q How did that come about?

25 A I do not recall exactly, but it was probably a month or
175

1 a month and a half or two months ago, you showed these to me
2 in my office.

3 Q Did you arrive at an opinion as to the retail price
4 for those glasses in the trade area, Doctor?

5 A Yes, sir.

6 Q Could you tell us what that opinion is?

7 A Yes, sir, \$72 for the three pair.

8 Q Could you break that down, Doctor?

9 A Yes, sir. There is one pair of bifocals.

10 HEARING EXAMINER LYNCH: Excuse me, Mr. Gross.

11 Take them by exhibit number, will you please?

12 By Mr. Gross:

13 Q Will you tell us what the retail price in the trade area
14 would be for Commission's Exhibit 27?

15 A Yes, sir, it would be \$28.

16 Q Could you describe those glasses?

17 A A pair of bifocals in an Arnel frame, would sell for \$18
18 -- the lens would sell for \$10 and the frame for \$10.

19 Q I show you Commission's Exhibit 28 and ask you if you can
20 give your opinion of that?

21 A This is a pair of distance glasses, myopic glasses,
22 I should say, probably for distance. The lenses would be \$12
23 and the frame would be \$10.

24 Q I show you Commission's Exhibit 29, could you give us a
25 breakdown as to the retail price on that?

A These are probably reading glasses. The lens would sell

1 for \$12 and the frame for \$10. The last two were single
2 lens.

3 Q When you say "probably reading glasses" --

4 A Well, judging from the bifocals, I see one is made to a
5 distance prescription and the other is made up for reading.

6 Q Are you having trouble recalling just exactly what your
7 findings were?

8 A Yes.

9 Q If I showed you notes which you reduced to writing
10 at that time would that refresh your memory?

11 A Yes, sir.

12 Q Are these the notes that you reduced to writing after
13 you examined those glasses, Doctor?

14 A Yes, sir.

15 Q Can you now tell us with certainty what those glasses
16 are?

17 Has that changed your opinion as to the prices you have
18 already given?

19 A No, sir, it would not change my opinion.

20 Q And the prescription is what?

21 A One pair of bifocals, one pair of reading, and one pair
22 of distance.

23 Q And the prices that you have given us, are those the
24 prevailing retail prices?

25 A It would be the same.

1 Q What would your prices be for these glasses, Doctor?

2 A Essentially, the same as I quoted.

3 MR. GROSS: Thank you, Doctor. I have no further
4 questions.

5 HEARING EXAMINER LYNCH: We will take a ten-minute
6 recess before cross-examination.

7 (Short recess.)

8 HEARING EXAMINER LYNCH: We will come to order, please.
9 Proceed.

10 MR. GROSS: Your Honor, if I may beg your indulgence?
11 I find there are a couple of questions that I neglected to ask
12 the witness, that I would like to ask at this time.

13 HEARING EXAMINER LYNCH: Go ahead.

14 MR. GROSS: Thank you, Your Honor.

15 By Mr. Gross:

16 Q Dr. Ephraim, I would like to bring your attention to
17 your testimony regarding Minnie Henry and the eyeglasses of
18 Minnie Alice Henry that you said you examined.

19 A Yes, sir.

20 Q I believe you said that these lenses contained a cor-
21 rection?

22 A Yes, sir.

23 Q Could you describe the correction in those lenses?

24 A Yes, sir. They are plus 25 cylinders, which is the weakest
25 possible lens you can put into a pair of frames. They are not

1 ground any weaker than that in stock lenses.

2 MR. GROSS: That is all. Thank you very much.

3 CROSS-EXAMINATION

4 By Mr. McKean:

5 Q Dr. Ephraim, are you a medical doctor?

6 A No, sir. No, sir, I am an optometrist.

7 Q You are not licensed to practice medicine in the District
8 of Columbia?

9 A No, sir.

10 Q Or anywhere else?

11 A Or any place else.

12 Q You are not a graduate of a medical school?

13 A No, sir.

14 Q And you are not a member of the American Medical Associa-
15 tion?

16 A No, sir.

17 Q Would you be eligible for membership?

18 A No, sir.

19 Q Doctor, what is an ophthalmologist?

20 A An ophthalmologist is a physician who specializes in
21 diseases of the eye.

22 Q Do ophthalmologists treat or prescribe for refractive
23 errors?

24 A Yes.

25 Q Do they prescribe eyeglasses?

A Yes.

- 1 Q What else do they treat?
- 2 A They treat all diseases of the eyes.
- 3 Q Do you treat diseases of the eyes?
- 4 A No, sir.
- 5 Q When I say "you", I guess I should say that I am referring
- 6 to optometrists.
- 7 A Optometrists do not treat diseases of the eye.
- 8 Q Would you tell me again what optometrists do?
- 9 A Optometrists diagnose refractive errors and prescribe for
- 10 those errors, errors of refraction and muscle, and for muscle
- 11 imbalances, and prescribe for refractive errors.
- 12 Q You say refractive?
- 13 A Yes, sir.
- 14 Q What are we referring to there?
- 15 Are we referring to the optical properties of the eye
- 16 A Yes, sir.
- 17 Q Whether the eyes make a proper focus and so forth?
- 18 A Yes, sir, how the patient sees.
- 19 Q If the patient has some sort of disease, or something
- 20 of that sort, would you be competent to treat it or to prescribe
- 21 for it?
- 22 A No, sir.
- 23 Q What is an optician?
- 24 A An optician is an individual who makes glasses on the
- 25 prescription of an optometrist or an ophthalmologist.

1 HEARING EXAMINER LYNCH: He fills prescriptions?

2 THE WITNESS: Yes, he fills eyeglass prescriptions.

3 He may grind and insert lenses and fit and adapt the prescrip-
4 tion to the patient.

5 By Mr. McKean:

6 Q And it is the optician who grinds the lenses and cuts them
7 and prepares them and fits them in frames, and so forth?

8 A Yes.

9 Q We have the optometrist who measures refractive errors and
10 may or may not prescribe eyeglasses, and we have the ophthalmol-
11 ogists who are medical doctors who treat all sorts of diseases
12 and conditions of the eyes including refractive vision errors.

13 A Yes.

14 Q Is it fair to say you treat simply refractive vision
15 defects?

16 A Not only vision defects, but we also can handle muscular
17 conditions of the eyes, even though they may not have any
18 refractive error; they do not coordinate but can be trained to
19 coordinate.

20 Q Is this something commonly referred to, I suppose rather
21 loosely, as cross-eyes, crossed eyes, that sort of thing?

22 A That would be one small part of it, yes, sir.

23 Q Now, Doctor, you said that you have a laboratory.

24 A Yes, sir.

25 Q What do you do in that laboratory?

1 A We fill our own prescriptions when the only thing is
2 required is a stock lens. By stock lens, I mean lens that
3 are commonly ground by manufacturing opticians, the big
4 companies.

5 Q And you purchase lenses?

6 A Yes, sir.

7 Q And you stock lenses?

8 A Yes, sir.

9 Q And where a prescription calls for such a lens, you will
10 cut the edge and insert it in the frames?

11 A Yes, sir.

12 Q What do you do with the other cases?

13 A We send them to manufacturing opticians for grinding,
14 cutting, edging, and inserting.

15 Q And what do you send them?

16 A We send them the specifications for the pair of glasses
17 we desire.

18 Q Do you send them a frame as well?

19 A Occasionally, if they stock the frame, we order the frame
20 from them.

21 Q And if they do not stock the frame?

22 A Then, we might order the frame from another source and
23 send it to them.

24 Q Do you maintain a stock of frames?

25 A Very minimum, just sample frames.

Q You do not stock frames?

1 A No, sir.

2 Q When you are preparing a pair of eyeglasses in your
3 own laboratory, where do you get the frames?

4 A From a wholesale optician.

5 Q You buy the frames?

6 A Yes, sir.

7 Q But you maintain a stock of lens in your laboratory?

8 A Yes, sir.

9 Q What proportion of your total sales of eyeglasses are
10 prepared in your own laboratory from stock lens and stock
11 frames?

12 A Well, I do not stock frames. If they were prepared in
13 my laboratory, I would say probably 90 or 95 per cent of what
14 I order, I order from the wholesale laboratory -- Probably,
15 I would guess from maybe 40 to 60, probably 50 per cent;
16 are done in my lab and 50 per cent sent out.

17 Q Doctor, you testified, didn't you, that you sell eye-
18 classes,

19 A Yes, sir, as part of the overall service. I just do not
20 just sell eyeglasses. If someone came in and wanted to buy
21 them, I would not sell them eyeglasses.

22 Q You also conduct examinations?

23 A Yes, sir.

24 Q Which leads you to decide to recommend or not to recom-
25 mend eyeglasses?

1 A Yes, sir.

2 Q And in the case you have recommended the eyeglasses, you
3 sell them?

4 A If they wish, I give them that option.

5 Q If they wish to buy them, then you sell them?

6 A If they wish to take the prescription any place they
7 want, they may.

8 Q Doctor, I would like to inquire a little further into
9 your familiarity with the optical trade, so to speak, and
10 your familiarity with prices.

11 MR. MC KEAN: I take it, Your Honor has no objection
12 to my going further into what I was going into on voir dire.

13 HEARING EXAMINER LYNCH: Go ahead. Perhaps this is
14 the time to do it.

15 By Mr. McKean:

16 Q You told me that in the last year been in the office
17 or store of two of your fellow optometrists.

18 A If I may -- In retrospect, if I might amend this, I was
19 in the office of Dr. Katz who is deceased, as part of our
20 organization service, in which we give to widows, and I also
21 was in his office and served there for, I would say, a total
22 of about four days.

23 Q So that is three?

24 A Then, I was in the office of Dr. Shelton. Kelly Shelton.

25 And I was in the office of John Tolman.

1 Q What was the first name again?

2 A Shelton. The first one I served was Dr. Max Katz, who is
3 deceased, and then there was Dr. Shelton and Dr. Robbins.

4 Q What did you do for Dr. Shelton and Dr. Robbins?

5 A Nothing. This is merely a social call.

6 Q A social call?

7 A Yes, sir.

8 Q One social call?

9 A I would say more than one. I have been there several
10 times.

11 Q Are they located near you?

12 A Yes, they are in the Press Building, at 14th and F.

13 Q And you mentioned Dr. Tolman?

14 A I was in his office one time.

15 Q What was the occasion of that visit?

16 A Again, it was a social call.

17 Q When you called on Dr. Tolman, did you discuss price?

18 A No, sir, I did not.

19 Q How about Dr. Shelton?

20 A We did not discuss price.

21 Q I take it you could not very well have discussed price
22 with Dr. Katz when you were in his office?

23 A No, sir, but he did the work according to his usual
24 fees. He did that according to usual fees.

25 Q Who told you what his usual fees were?

1 A His office girl.

2 Q Let me find out something else here. How many members are
3 there in the Optometrical Society?

4 A 45.

5 Q And how many optometrists are licensed in the District
6 of Columbia?

7 A I would say approximately 150 licensed in the District
8 of Columbia.

9 Q How many are practicing optometry?

10 A Probably about 85.

11 Q You say "probably"?

12 A I do not know about the exact figure. It is constantly
13 changing and shifting. Men move from here to Virginia and back.
14 It is not a hard figure from day to day.

15 Q How many ophthalmologists are there in the District of
16 Columbia?

17 A I do not know.

18 Q Are there at least 50?

19 A I would not venture a guess. My guess would be about 50.
20 yes.

21 Q Are these all medical doctors?

22 A Yes, sir, they are all medical doctors, yes.

23 Q Are they engaged in prescribing eyeglasses?

24 A I would say they all are, yes, sir.

25 Q When they prescribe eyeglasses, what does the patient do?

1 A Takes the prescription to an optician.

2 Q What does the optician do?

3 A He fills the prescription and gives the patient the glasses.

4 Q Who sells the glasses to the patient?

5 A The optician.

6 Q Not the ophthalmologist?

7 A No, sir, although I do believe there are one or two
8 ophthalmologists who dispense in their own office.

9 Q Are you closely familiar with many of the ophthalmologists?

10 A Yes, I am.

11 Q Have you discussed price with them?

12 A No, sir. There is no reason to discuss price, once I am
13 familiar with them.

14 Q How about opticians, retail opticians?

15 Are they what are referred to as dispensing opticians?

16 A Yes.

17 Q As distinct from manufacturing opticians?

18 A Yes.

19 Q What is the difference between a dispensing optician and
20 a manufacturing optician?

21 A My interpretation is that a dispensing optician would be
22 the one who makes the glasses and sells them to the public.

23 A manufacturing optician would be what I call the whole-
24 sale lab. They do not deal with the public but manufacture for
25 the dispensing optician.

1 charge?

2 A I think that has been a very common occurrence. It has
3 come up at meetings, and there are two reasons for this. One
4 is the Vision Career Service.

5 We have contracts with unions in which we are paid our usual
6 fees for services, and a man cannot charge a union man more
7 than his usual fee, so that has been a subject of discussion,
8 and under Medicare, you cannot charge more than your usual
9 fees, and, in getting a presentation to the Public Health
10 service, we have discussed fees, yes, sir.

11 Q You said that you can't charge more than your usual
12 fees to these classes of people?

13 A That is right.

14 Q Do you charge more than your usual fees to some people?

15 A I would say, "yes, sir."

16 Q How about other optometrists?

17 A I do not know what they do.

18 Q You do not know whether they charge more than their usual
19 fee?

20 A No.

21 Q Or less?

22 A Or less, I do not know.

23 Q What contact have you had with optometrists in the city
24 of Washington, D. C. who are not members of the Optometrical
25 Society?

1 A I have several close friends who are not members of the
2 Optometrical Society.

3 Q Have you had social contacts with them?

4 A Yes, sir.

5 Q Have you had business contacts with them?

6 A No, sir, I have not.

7 Q Have you been in their shops or stores?

8 A Yes, I have.

9 Q Can you name --

10 A I was in the office of Eli Crystal. He has a department
11 in Lansburgh Department Store. I was in there. I forgot to
12 mention that.

13 Q Did you discuss the prices that he charges?

14 A No, sir, I did not.

15 Q Could you estimate for me the number of sources of
16 eyeglasses that there are in the city of Washington, counting
17 all sources?

18 A You mean to the public?

19 Q To the public, yes.

20 A I could not estimate that.

21 Q Is it over a hundred?

22 A Definitely over a hundred.

23 Q Over 150?

24 A It would just be a guess. I would say probably 150.

25 Q Would it be over 200?

1 HEARING EXAMINER LYNCH: He said it would be a guess.

2 Go on to something else.

3 By Mr. McKean:

4 Q Do all optometrists have their own laboratories?

5 A No, sir, they do not.

6 Q Do you have any idea how many of the optometrists
7 who are members of the Society have their own laboratories
8 and how many do not?

9 A Again it would be a guess, probably 50. I would say
10 60 per cent do and perhaps 40 per cent do not. That is a
11 guess. I have never stopped to figure out how many do and
12 how many do not.

13 I would say that my guess would be about 75 per cent do
14 have their own labs.

15 HEARING EXAMINER LYNCH: 75 per cent of what?

16 THE WITNESS: Of the total.

17 By Mr. McKean:

18 Q Referring to the optometrists who are not members of the
19 Optometric Society, what is the correct title of that body?

20 A District of Columbia Optometric Society.

21 Q Referring to optometrists who are not members of the
22 District of Columbia Optometric Society, do you know how many of
23 them do and how many do not have their own laboratories?

24 A Of the men who are not members, probably 60 per cent are
25 employed by firms who do have their own laboratories, and, again,

1 60 per cent is a loose figure, but the majority of the men who
2 are not members are employed.

3 Q Doctor, having your own laboratory or not having your own
4 laboratory would affect the cost on the eyeglasses, wouldn't it?

5 A Not really, not greatly, because a laboratory is more a
6 service than a saving, because, to break it down directly,
7 the lab charges us to service a pair of lenses and when I figure
8 the breakage and the time involved, I would say it is more
9 of an accommodation than a savings.

10 Q I did not ask whether it was a saving.

11 I wanted to know whether it affected your cost.

12 A I guess it would have to affect your cost in a small way,
13 not in a great way. I think a better answer to that, the reason
14 for more men having laboratories is the fact that the service
15 has become a problem, not only in the District of Columbia,
16 but throughout the country where we have difficulty getting men
17 to do the work, and the service has deteriorated, and, as a
18 matter of self protection, they have been forced to have their
19 own labs, even though it is not a money saver.

20 Q Do you have same-day service?

21 A It depends on the prescription. In an emergency we can
22 give one-day service. A more usual service is three days for
23 bifocals or probably five days or a week, depending on the
24 prescription.

25 Q Doctor, is there any variation in the price charged for

1 eyeglasses among the various dispensing opticians and optome-
2 trists who practice in their own offices, optometrists who may
3 practice for someone else, optometrists who have labs, other
4 organizations who have an optometrist department in their
5 establishment -- is there any variation in price on eyeglasses?

6 A There would not be a consistent variation according to
7 classifications.

8 There is a variation in any field. Some places get \$2
9 or \$3 more for a pair of glasses, but on the whole, and espec-
10 ially in discussing non-Society men, I would say that the
11 variations on this are on the lower side, that they are much
12 cheaper than we are, rather than higher.

13 Q I am not distinguishing between non-Association and Asso-
14 ciation men. I am just asking you.

15 Let us simplify the question and talk about a particular
16 undesignated pair of eyeglasses.

17 If you bought the same pair of eyeglasses from all 150
18 sources, are you going to encounter a variation in price?

19 A Yes, sir, you would.

20 Q Now, didn't you just tell me that the variation would be no
21 more than \$3?

22 A I did not say that. I meant among the Society.

23 Q You meant that among the Society?

24 A Even that would be -- I would say there is a close relation-
25 ship among fees charged for glasses. You would not find

1 any gross glaring inequity. I think it would be no more than
2 \$2. One might get \$22 for one type, and one might get \$24,
3 but the variations are on that order. You would not see \$22
4 and \$50 or \$22 and \$60.

5 Q We are talking about, by your own testimony at least,
6 certainly a hundred outlets or sources for glasses and
7 possibly 150, and you are not certain in that range, that it
8 might be more or it might be less, but it is your testimony
9 that it would be no more than \$3 or \$4?

10 Is it your testimony that there is no more than \$2 or \$3
11 or \$4 variation between the prices charged by these various
12 outlets?

13 A If I said that, I was in error.

14 Q Then, let me ask you, if I may.

15 Can you give me any testimony as to what would be the
16 range of variations among all of these outlets?

17 A Including the New York Jewelry Company?

18 Q Let us exclude the New York Jewelry Company.

19 A If you exclude it, you cut down the range quite a bit.

20 Q Let's cut down the range quite a bit.

21 You are testifying about what other people do.

22 A If you could give me a specific pair of glasses.

23 You are talking about a thousand types of glasses and
24 asking me what the range is.

25 Well, the range can be tremendous, but you give me one

1 pair of glasses, and I can make a pretty good guess what the
2 range would be.

3 Q Take your own glasses.

4 A Yes. I would say that the probable range for a pair of
5 glasses that I have -- on the high side and on the very high
6 side, would probably be on the high side, probably \$50, and I
7 have tinted glasses.

8 Q I am asking for the total variation, and you are telling
9 me.

10 A This pair of glasses, I say the price range could vary
11 from a high of \$50 to a low of probably \$35 or \$36. It might
12 range between \$36 and \$50.

13 Q So, with regard to your own pair of glasses, because you
14 were asked to specify a particular pair, you are telling us
15 that with regard to them, there is, by your testimony, a \$14
16 range of price possible?

17 A An extreme range, out of perhaps a hundred practitioners.

18 Q Are you limiting your answer --

19 A Now, if I may, may I speak a little further on that?

20 HEARING EXAMINER LYNCH: Just a minute. Answer the
21 question. The question is with respect to retail outlets.

22 MR. MC KEAN: That is right.

23 HEARING EXAMINER LYNCH: Then, the witness used his
24 own glasses, and he has said that it varied.

25 THE WITNESS: It could vary that much.

1 By Mr. McKean:

2 Q Then, that makes me wonder. Are you limiting the answer
3 on that variation to optometrists who practice in their offices
4 who are members of the D. C. Optometric Society, or did you mean
5 the answer to cover all the various retail sources?

6 A I was thinking of all the retail sources.

7 Q You told me about a \$14 spread on that pair of glasses.

8 A Yes, sir.

9 Q Are you telling me that there are no glasses, where it
10 would be a larger spread, that that is the biggest spread we
11 could expect to encounter?

12 Let me explain the question to you, so you will understand
13 it.

14 You testified on direct, very easily, very smoothly, that
15 the price for a given pair of glasses that you had not seen was
16 x dollars -- right on the button \$26, that that was the pre-
17 vailing price.

18 I would like to find out what kind of spreads, if there are
19 are any involved, are involved.

20 Now, is it your testimony that the biggest spread we could
21 expect to find is about \$14, or am I misinterpreting you?

22 A You are talking about an entire group?

23 Q Take it that way, as an entire group.

24 A Actually, I do not believe the \$14 spread, that that would
25 be unusual in any pair glasses, but we have extreme cases, and

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1 the reason I am finding difficulty in citing much higher fees
2 where they have been charged --- I mean way out of line -- per-
3 haps instead of \$50 for a pair of glasses like mine, the charge
4 might be \$150.

5 Q Do not forget. We are excluding New York Jewelry, because
6 you were testifying not about what New York Jewelry charges.
7 The Commission has evidence in that. You are testifying about
8 what everybody else charged. Tell me about the variation.
9 You said just maybe \$150.

10 A Most of my answers were based on average fees in the
11 District of Columbia. I have no knowledge myself of the
12 extremes of each practitioner. I did not see a result of
13 that survey, even though it was available.

14 Q Were you answering Mr. Gross' question on the basis of
15 that survey?

16 A Well, I assumed Mr. Gross was asking what my usual fee
17 was, and I answered on what my usual fee was and my knowledge
18 of the usual fees in this area.

19 Q There is a distinction there. I think I should point
20 out to you that if you answered the questions on the basis of
21 your own usual fee would be, then you know what you charge;
22 but if you are answering on the basis of what you think other
23 people charge, that is different.

24 A Yes, sir.

25 Q When he asked those questions, were you relying on the

1 results of that survey?

2 A No, sir. Everyone except one were my usual fees. My usual
3 fees would have been the same as I expressed.

4 Q Your usual fee would have been?

5 A Yes.

6 Q But were you testifying that this was the usual fee that
7 everybody else charged?

8 A No, sir, I am not.

9 MR. MC KEAN: We have a problem, and the only thing
10 I can do is call to your attention and bring it to you, to
11 your attention.

12 If the witness is testifying about those prices with
13 regard to the exhibits that were shown him, as having been
14 his usual fee, then I have no objection to it. If he is testi-
15 fying that those prices were the prices charged by other people,
16 then I move to strike it. I do not think that he has been shown
17 to be qualified to testify as to exact or usual prices charged
18 by others.

19 MR. GROSS: I think we made it clear on direct that,
20 in each case, we established two prices. One his opinion of
21 what the prevailing retail price would be in the trade area
22 based on his 18 years of experience in the District of Columbia
23 as an optometrist, and, two, what his price would be for the
24 same pair of glasses.

25 I tried to go through that with each witness. I think

1 By Mr. McKean:

2 Q Incidentally, Doctor, you told me that you maintain a stock
3 of frames in your office.

4 A Sample frames, not a stock. I do carry a sample line.

5 Q Are these frames your own, or do they belong to the
6 supplier?

7 A They are mine.

8 Q You paid for them?

9 A Yes.

10 Q You have one of each kind?

11 A I try to have one of each kind.

12 Q One of each kind that you use?

13 A Yes.

14 Q And if a patient selects one, you make an order for
15 that frame, either delivered to you or delivered to the whole-
16 saler, and if it is the wholesaler he takes it out of his stock?

17 A That is correct.

18 Q Doctor, is it true that all eyeglass frames are not the
19 same size or shape?

20 A Yes, sir.

21 Q So, when lenses are manufactured, in what shape or shapes
22 are they manufactured?

23 A Some companies manufacture them round and some manufacture
24 them -- You would not exactly call it square, because it has
25 rounded corners.

1 Q But substantially square?

2 A Substantially square, yes, sir, but they are longer
3 diagonally.

4 Q Longer in one direction than another?

5 A They are pretty symmetrical.

6 Q Practically square but with rounded corners?

7 A Yes.

8 Q And in order to take a pair of lenses and put them into
9 frames, they must be cut and then edged and then placed in
10 the frame?

11 A Yes, sir.

12 Q This is something that an optician does?

13 A Yes, sir.

14 Q A dispensing optician would do it, or a manufacturing
15 optician?

16 A Yes, sir.

17 Q A manufacturing optician in the city of Washington, do
18 they make their own lenses or do they buy them?

19 A It is a common practice for them to buy stock lenses and
20 if they are bifocals they buy the blanks but they surface them.

21 Q Surface means grind?

22 A Grind the prescription into them.

23 Q Do they make their own frames or buy frames?

24 A They buy frames.

25 Q The manufacturing optometrist in the city of Washington,

1 Q Doctor, who are your suppliers of lenses?

2 A My two main suppliers of lenses are Titmus Optical
3 Company -- I do not get them directly. I get them wholesale.
4 That is, Titmus-Shuron.

5 Q When you say you get them directly from them --

6 A I buy all of my lenses from New City Optical Company.

7 Q And New City buys them from Titmus-Shuron?

8 A Yes, sir.

9 Q Where is New City Optical Company located?

10 A On 14th and H Street, Northwest. I think it is 1407 H
11 Street, Northwest. I am not sure of the address. It is at
12 the corner of 14th and H.

13 Q Do they publish a catalogue or price sheets?

14 A Yes, sir, they do.

15 Q Do you buy all of your lenses from New City?

16 A Yes, sir.

17 Q Do you buy stock lenses from them?

18 A Yes, sir. There is one impression I do not want to
19 leave.

20 HEARING EXAMINER LYNCH: Did you get the question?

21 THE WITNESS: I made one mistake. I buy all my stock
22 lenses. I do not have all my service work done by New City.

23 MR. MC KEAN: That is what I was getting to.

24 By Mr. McKean:

25 Q When you have lenses specifically ground, who does that?

1 A I deal with four or five different laboratories. I deal
2 with New City and Connecticut and Lone Star in Texas.

3 Q And in these cases, you do not send out a blank lens, you
4 just send out a prescription?

5 A Yes.

6 Q New City, Connecticut, and Lone Star in Texas.

7 A And in the past I dealt with Eyecraft in Minneapolis, and
8 one in Southwest Texas for a period, and I dealt with Dai-Tex
9 of Texas for a short time, and I have dealt with American
10 Optical and with Bosch and Lomb.

11 Q Let's limit it to the last two years.

12 A For the last two years I have dealt with New City, Bosch
13 and Lomb and Blue Ridge Optical of Roanoke, Eyecraft, South-
14 western of Dallas and Lone Star of Dallas, Connecticut Optical
15 Company.

16 Q And New City?

17 A Yes, sir.

18 Q Which one gets the bulk of your business?

19 We are talking about only your ordering the glasses from
20 the manufacturing opticians. We are not talking about your
21 supply of stock lenses.

22 Which ones of these get the bulk?

23 A I would say Connecticut gets the bulk.

24 Q Would you say they get three quarters of it?

25 A I would say over 60 per cent.

1 Q Who is second?

2 A New City.

3 Q Between Connecticut and New City, do they get 90 per cent?

4 A I would say 80 per cent.

5 Q And both of them are located in Washington?

6 A Yes, sir.

7 Q You mentioned Titmus and Shuron.

8 A They are manufacturing opticians. They manufacture lens,
9 manufacture the blanks. They manufacture the lenses. That is
10 a wholesale operation.

11 Q Do they also manufacture stock lenses?

12 A Yes, sir.

13 Q And you buy stock lenses from New City and New City has
14 in turn either bought from Titmus and Shuron --

15 A Yes.

16 Q Does New City carry other makes or brands of lenses
17 besides those two?

18 A I would say probably 99 per cent of these two, 95 per
19 cent are Titmus and Shuron, or American Optical or Beach and Lomb.

20 Q Where do you obtain frames?

21 A The bulk of them, probably better than 95 per cent,
22 maybe 99 per cent or better, from Connecticut or New City
23 Optical -- probably 50-50 on the frames.

24 Q Are all frames sold to you at the same price?

25 A No, sir.

1 Q Doctor, I am going to direct your attention to the Dal-Tex
2 invoices that Mr. Gress questioned you about, and I will mention
3 the number of the exhibit as we go along.

4 Would you refer to Commission's Exhibit 79?

5 A Yes, sir.

6 Q The testimony related to a price of \$24.

7 A No, sir, not for this one.

8 Q Not for this one?

9 A This one was \$9.

10 Q What does the invoice call for?

11 A It calls for bifocals.

12 Q Is that for one lens?

13 A Yes, sir.

14 Q That is not two lenses. That is one lens, not a full pair
15 of glasses, is it?

16 A No.

17 Q Do you know what kind of frame this particular lens was
18 put in?

19 A No, sir. But that would not affect the price.

20 Q The price of what?

21 A Of the lens.

22 Q What you were testifying with regard to that, regardless
23 again as to how we characterize it, was a retail price of one
24 lens.

25 A I was testifying to my price for this lens.

1 by New York Jewelry?

2 A Just what the record says. It says it is the patient's
3 frame.

4 Q Do you know whether they brought the frame into the store
5 or not?

6 A No, sir, I do not.

7 Q Your testimony is that you would have charged her \$26 for
8 the two lenses, and for placing them in a frame that she may
9 brought to you?

10 A For this pair of lenses.

11 Q If you provided the frame, what would it have been?

12 A It depends on the frame entirely.

13 Q Let us say a frame cost \$2.

14 A Probably \$10.

15 Q And that does not include an examination fee?

16 A No, sir, it does not.

17 Q Would you look at Commission's Exhibit 95?

18 This is for Charles Logan. You gave a price of \$28.

19 Does that include the charge for an examination?
20 ~~Commission's Exhibit 95~~

21 A No, sir.

22 Q Were you including a charge for examination on any of
23 these?

24 A No, sir, I was not.

25 Q What is your charge for an examination?
~~Commission's Exhibit 95~~

A \$10.

1 Q Does every practicing optometrist in the city charge the
2 same for an examination?

3 A No, sir, they do not.

4 Q Can you give me the range of variations on the examination
5 charge?

6 A To my knowledge, it would probably run from \$5 to \$25.

7 Q Would you take a look at Commission's Exhibit 90?

8 From the exhibit, can you identify the frame?

9 A No, sir, I cannot.

10 Q Were you assuming any particular frame when you gave the
11 answer you gave to Mr. Gross?

12 A Yes, sir, I was assuming -- I know the type of frame
13 itself, even though not the exact frame. I was assuming the
14 frame cost \$1.40 and would not retail for over \$10. The cost
15 to the firm \$1.40 and would not retail for over \$20.

16 Q Just to make certain of something in connection with
17 these exhibits, and I will read them all over, so we have a
18 record of what I am talking about.

19 Commission's Exhibits 79, 103, 95, 90, 87, 85, 81, and 79
20 -- I guess I had them in reverse order.

21 A 79 is the first you mentioned.

22 Q Your testimony was that the fee you quoted did not
23 include the charge for examination in any case.

24 A In any case, no, sir.

25 Q Let me turn to another topic. I am going to refer you to

1 By Mr. Gross:

2 Q You were asked, Doctor, on cross-examination, to give the
3 range in the area between all the available outlets to the
4 consumer for eyeglasses on your pair of glasses.

5 A Yes.

6 Q Could you do the same for a pair of Minnie Henry's
7 glasses, again excluding New York Jewelry Company?

8 HEARING EXAMINER LYNCH: Referring to Exhibit No. --

9 MR. GROSS: No. 35.

10 THE WITNESS: This would not narrow the range con-
11 siderably, because I would say the bulk of the practitioners
12 in this area would not carry the frame which is a discontinued
13 frame. There are only, generally speaking, the price houses,
14 the ones that deal with this type of frame. The price house,
15 for this pair of glasses, would probably get \$7.75.

16 MR. MC KEAN: Objection.

17 HEARING EXAMINER LYNCH: The objection is sustained.

18 Can you answer counsel's question?

19 Mr. Gross asked you a question which I think you can
20 answer one way or the other?

21 Will you repeat your question?

22 By Mr. Gross:

23 Q I asked if you could give the range in retail prices
24 for Corbinson's Exhibit 35, which is Minnie Henry's eye-
25 glasses, among all of the retail outlets in the D.C. area;

1 MR. MC KEAN: He has not been shown to be qualified
2 as an expert to render an opinion on this sort of thi .

3 HEARING EXAMINER LYNCH: You asked him the same ques-
4 tion about his own eyeglasses.

5 The objection is overruled.

6 "Yes" or "No", if you can answer it?

7 THE WITNESS: The low range on this pair of glasses
8 would be \$7.95. The range above, the high range, would probably
9 be \$30.

10 HEARING EXAMINER LYNCH: Ask the next question.

11 By Mr. Gross:

12 Q You said, I believe, that you dealt with Dal-Tex for a week.
13 Is that correct?

14 A For a very short time.

15 Q Why did you discontinue trading with Dal-Tex?

16 MR. MC KEAN: I object. That is not relevant.

17 HEARING EXAMINER LYNCH: The objection is overruled.

18 Answer the question. How long was it?

19 THE WITNESS: A very short time, about ten days, maybe.
20 I did not find the work satisfactory.

21 MR. MC KEAN: I move that the answer be stricken.

22 HEARING EXAMINER LYNCH: It may be stricken. The
23 motion is granted.

24 Go ahead and ask the next question.

25 By Mr. Gross:

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1 Q Mr. Ullman, if I am not mistaken, I think yesterday when
2 we left off, we were discussing certain conditional sales con-
3 tracts and the carrying charges therefor, and I would like to
4 continue by putting in front of you Commission's Exhibit 109
5 in evidence which is the conditional sales contract for Vernetta
6 Henderson, whose contract indicates she purchased optical serv-
7 ices for \$49.50.

8 The carrying charges noted on that conditional sales con-
9 tract are \$1. Would you tell me how you arrived at the charge
10 of \$1 for carrying charges on that contract?

11 A The carrying charges -- We have been developing this at
12 various times and have figured it various ways and in varying
13 amounts.

14 There was a time where we just figured a flat charge of
15 \$1 as a carrying charge which was a differential between the
16 cash price and the time price.

17 Q Then, Mr. Ullman, we have talked about four different
18 kinds of carrying charges that occurred at four different periods
19 of time.

20 Would you start at the beginning and tell me in what
21 definitive period of time we are involved in each of these
22 various kinds of carrying charges that you have described?

23 A I would not be able to remember the times that these
24 things took place.

25 Q Mr. Ullman, let me start back over again. I am sorry --

1 MR. EPSTEIN: I am sorry, Your Honor, that we do not
2 have the record from yesterday prepared yet. but to the best of
3 my recollection we talked about a contract in January of 1966
4 that was executed and we discussed that there was a 20 per cent
5 flat charge, and then you recomputed it with a pencil and paper
6 and it came out to somewhere around 18 per cent.

7 Now, for what period of time did you charge this flat
8 rate for the conditional sales contract?

9 THE WITNESS: I would not be able to remember that.

10 By Mr. Epstein:

11 Q Then, Mr. Ullman, we talked about a contract that was
12 executed in May of 1966, in which you indicated to us there
13 was a record or index of which you extracted the charges and
14 arrived at the figure that was the average of 1-1/2 per cent
15 per month.

16 From what period of time did that go on?

17 A I gave that matter some thought last night, and I recomputed
18 it. At that time, it is apparent that we were figuring the
19 carrying charge at 1 per cent per month; the period of time
20 that this situation existed, I could not tell you from memory.

21 Q Now, we have a contract, the one that we are referring to
22 specifically, Commission's Exhibit 109. That was in April -- as
23 a matter of fact, April 11, 1966. Can you tell me that at that
24 time you were charging \$1?

25 How long a period of time did the \$1 figure for carrying

1 charges transpire in your store?

2 A I would not be able to tell you.

3 Q Now, I want to ask you here, Mr. Ullman, to look at
4 Commission's Exhibit 69, which is a conditional sales contract
5 for Charles Logan which indicates that he bought a pair of
6 bifocals and a pair of reading glasses for a total price of
7 \$79. Now, would you indicate to me where the carrying charges
8 were for Mr. Logan's purchase?

9 A There is no carrying charge reflected on this contract.

10 Q Now, if I am not mistaken, this contract does not have
11 a date as to when it was executed. Is that correct?

12 A There is no date at the top.

13 Q However, at the bottom it indicates that on January 18,
14 1966, when he signed the bottom portion -- he signed that
15 on January 18, 1966.

16 A Yes.

17 Q Would it be fair for me to assume, Mr. Ullman, that the
18 top portion and the bottom portion of the contract were
19 executed on the same date?

20 A It would.

21 Q Would you tell me how you computed that Mr. Logan did not
22 pay any carrying charge on that contract?

23 MR. MC KEAN: May I look at the contract before he
24 answers?

25 THE WITNESS: Shall I proceed?

1 I could not say why no carrying charges were charged
2 Mr. Logan on this contract.

3 By Mr. Epstein:

4 Q Now, we discussed yesterday, Mr. Ullman, that at or about
5 the same date, that is, about in the middle or the latter part
6 of January, we had arrived at the position that you had com-
7 puted your conditional sales contracts with carrying charges
8 that were 20 per cent, or computed out to exactly somewhere
9 around 18 per cent. Who paid the 18 or 20 per cent and who
10 did not, Mr. Ullman?

11 A There is no way that I could tell you who did or who did
12 not, Mr. Epstein.

13 I will say that, at that period, it was the general rule
14 that carrying charges be charged as they appeared.

15 Q Now, Mr. Ullman, in addition to the carrying charges, you
16 mentioned yesterday that accounts were charged 1-1/2 per cent
17 per month on the unpaid balance. Does that mean -- Again,
18 referring to Commission's Exhibit 109. Does that mean that
19 in addition to the \$1 carrying charge, Vernetta Henderson also
20 paid 1-1/2 per cent per month on her contract?

21 MR. MC KEAM: Objection, Your Honor. I do not think
22 I heard the question clearly. I would like to have the reporter
23 read it back.

24 (The record was read by the reporter.)

25 MR. MC KEAM: I object to the question as improper.

1 There was not any such testimony. What Mr. Ullman was that
2 at the maturity of the contract, when it has reached the terms
3 specified in the contract, the remainder balance at 1-1/2
4 per cent per month -- that was assessed on that balance on
5 certain contracts that he was giving testimony on.

6 HEARING EXAMINER LYNCH: That is my recollection of
7 his testimony.

8 Is that correct, Mr. Ullman?

9 THE WITNESS: That is correct, sir.

10 MR. EPSTEIN: I will withdraw the question, Your

11 Honor.

12 By Mr. Epstein:

13 Q In addition to the carrying charges, were there any other
14 carrying charges or interest rates that were put on these
15 contracts that people had to pay for?

16 A I do not understand that question.

17 Q In addition to the carrying charges that are specified on
18 this contract, did this person, Vernetta Henderson, pay any
19 other interest or charges for the purchase of the goods which
20 are enumerated in that contract?

21 A There is nothing here to indicate that she did.

22 Q Is it possible she may have, Mr. Ullman?

23 A I can't say. I would have to have something at hand in
24 order to answer such a question.

25 Q What records would you need, in order to answer that

1 question?

2 A Any such charges would be reflected on the ledger card for
3 that customer.

4 Q Does the customer get a copy of this ledger card, to show
5 her payments?

6 A The customer gets a copy to show her payments, yes.

7 Q Does the customer get a copy of the ledger card?

8 A It is a customer book. I believe you have a sample of
9 it.

10 Q Does that book show the amount of interest she may have
11 paid in her payment?

12 MR. MC KEAN: Objection. There was no testimony that
13 there was any such --

14 MR. EPSTEIN: We are trying to establish whether or
15 not the witness would need any other data -- or what other
16 data this witness would need, or records, to show whether or
17 not this woman paid anything other than the carrying charges
18 indicated on this contract. That is the line of questioning I
19 am pursuing.

20 HEARING EXAMINER LYNCH: Doesn't the contract speak
21 for itself?

22 MR. EPSTEIN: To the extent that the contract also
23 refers to a certain percentage of interest that may be due and
24 owing. I tried to establish whether or not this woman, Vernetta
25 Henderson, in fact, paid any any amounts other than what was

1 specified in the contract. The contract does speak for itself.

2 HEARING EXAMINER LYNCH: Can you answer the question?

3 THE WITNESS: I do not know what the question might
4 be, Your Honor.

5 HEARING EXAMINER LYNCH: Do you know whether or not
6 there were any other charges or fees collected from this woman?
7 What is her name?

8 MR. EPSTEIN: Vernetta Henderson.

9 HEARING EXAMINER LYNCH: Vernetta Henderson. Is
10 there any way you can find out?

11 THE WITNESS: The ledger card should reflect it.

12 I can say this: If this contract ran beyond the
13 maturity date, it would be subject --

14 HEARING EXAMINER LYNCH: To 1-1/2 per cent.

15 THE WITNESS: 1-1/2 per cent.

16 HEARING EXAMINER LYNCH: According to the terms of
17 the contract?

18 THE WITNESS: Yes, Your Honor.

19 HEARING EXAMINER LYNCH: Where is the card you were
20 talking about that you say that you keep?

21 THE WITNESS: At the store.

22 HEARING EXAMINER LYNCH: Why haven't you got that,
23 Mr. Epstein?

24 MR. EPSTEIN: The issue as to whether or not this
25 woman paid anything more than --

1 the books, and I believe 5 per cent was -- Let me correct
2 that. 85 per cent of that \$355,000 was the substantial
3 amount of business done on credit. I want to know how much was
4 lost through the course of a year due to bad debts.

5 MR. MC KEAN: This is the same question that was
6 asked, and you just ruled on it.

7 HEARING EXAMINER LYNCH: I said, Mr. Epstein, would
8 you ask the next question. Apparently you did not hear me.

9 MR. EPSTEIN: I did not. I am sorry, Your Honor.

10 By Mr. Epstein:

11 Q You told us yesterday that you have a Dr. Dantzic who
12 does the eye examinations. Am I correct, that only Dr. Dantzic
13 does the eye examinations for the period in which he has been
14 with New York Jewelry?

15 A That is correct. I do not recall any other doctor having
16 done any examinations for us.

17 Q For the period of time in which Dr. Dantzic has been
18 presently employed, he has seen every single patient who has
19 come into the New York Jewelry Company for an eye examination?

20 A That is right.

21 Q Dr. Dantzic is an optometrist?

22 A He is.

23 Q Am I correct, Mr. Ullman, that it is the practice of the
24 New York Jewelry Company to give free eye examinations?

25 A Yes.

1 Q Is it?

2 A Yes.

3 Q Do you give free eye examinations to anyone who came in
4 requesting them?

5 A This offer was generally made to people who came into
6 the store with a gift card, not to anyone who came into the
7 store.

8 Q Well, backing up to the fact that you sent the card
9 through the mail and you made the card available out on the
10 street to passersby, whoever was passing by and picked them
11 up, is it fair to assume then that anyone who picked this card
12 up off the street or in the mail was entitled to a free eye
13 examination?

14 A I did not say that, Mr. Epstein.

15 MR. EPSTEIN: I will ask that this be marked 114 for
16 identification.

17 (The document referred to was marked as Commission's
18 Exhibit 114, for identification.)

19 By Mr. Epstein:

20 Q Am I correct that you have in the store and on the
21 premises --

22 HEARING EXAMINER LYNCH: Will you identify the
23 thing first?

24 By Mr. Epstein:

25 Q I show you, for identification, Commission's Exhibit 114

1 A This is apparently an advertisement that we ran in the
2 newspaper.

3 Q What newspaper did you run it in?

4 MR. EPSTEIN: May I state that it does not appear
5 on the reproduction, but it was the Washington Daily News,
6 from January 29, 1965.

7 Would that sound right?

8 THE WITNESS: I would accept that.

9 HEARING EXAMINER LYNCH: Do you have any objection
10 to that comment?

11 MR. MC KEAN: No objection to the comment.

12 HEARING EXAMINER LYNCH: Go ahead.

13 By Mr. Epstein:

14 Q Was this an advertisement that was run by New York Jewelry
15 Company?

16 A It is.

17 MR. EPSTEIN: I offer this in evidence.

18 HEARING EXAMINER LYNCH: Do you have any objection?

19 MR. MC KEAN: No, Your Honor.

20 HEARING EXAMINER LYNCH: It may be received.

21 (The document, heretofore marked for identification as
22 Commission's Exhibit 114, was received in evidence.)

23 By Mr. Epstein:

24 Q Am I correct that, on the premises of New York Jewelry
25 at 918 7th Street, you have a sign in the store that says "Free

1 Eye Examination"?

2 A I believe there is, yes.

3 Q And who is that sign directed to, Mr. Ullman?

4 A To customers who come into the store.

5 Q Do these customers, who request it, receive a free eye
6 examination?

7 A They do.

8 Q Now, Mr. Ullman, is there also a sign in the window or
9 one of the display windows at New York Jewelry Company's
10 premises that offers a free eye examination?

11 A I do not believe we have it in the window at present. We
12 may have had it.

13 Q There has been a period of time in which it has been in
14 the window possibly?

15 To whom was this sign directed?

16 A To people looking in the window.

17 Q And to people who looked in the window and then came in
18 for a free eye examination, was everyone entitled to a free eye
19 examination?

20 A I would say "Yes."

21 Q Now, Mr. Ullman, referring to Commission's Exhibit 114
22 which is an advertisement for discount eyeglasses for \$7.50,
23 how many pairs of eyeglasses in the course of a year does
24 New York Jewelry sell? Do you have a figure for us?

25 A That would be difficult for me to estimate.

1 MR. MC KEAN: We could provide an exact figure on
2 agreement with Commission's counsel that the figures we gave
3 for a given time period and a given year are representative of
4 previous years, other years, in which he had an interest.

5 HEARING EXAMINER LYNCH: It seems to me I saw some
6 documents.

7 MR. EPSTEIN: I will ask the reporter to mark this
8 as Commission's Exhibit 115, for identification.

9 (The document referred to was marked as Commission's
10 Exhibit 115, for identification.)

11 MR. EPSTEIN: Commission's Exhibit 115, for identifica-
12 tion, Your Honor, is an analysis. It is entitled "Analysis of
13 Sales of Eyeglasses for The Period January 1, 1966 through June
14 30, 1966," and, as counsel has indicated, these figures can
15 be capitalized or extended for an annual basis, and, further-
16 more, it is agreed, can represent reasonably accurate computa-
17 tions for previous years for '65 and '64.

18 MR. MC KEAN: That is correct, Your Honor.

19 HEARING EXAMINER LYNCH: You both stipulate to that?

20 It is agreeable between the two of you?

21 MR. EPSTEIN: It is agreeable.

22 MR. MC KEAN: Yes, Your Honor, that is correct. This
23 is a six months' period. We are agreeing that it can be annualized
24 for the year in which it occurred, 1966, and the figures so
25 obtained are representative of the total number of eyeglasses
sold by New York Jewelry in 1965 and 1964.

1 By Mr. Epstein:

2 Q Now, who supplies -- or from what sources do you obtain
3 watches that you sell in your store at retail, Mr. Ullman?

4 A From many sources.

5 Q Would you enumerate them for us, please?

6 A Bulova, Benrus, Longines, and a firm by the name of
7 Schwartz, and we have obtained some from an organization by
8 the name of Waldman and there may be others.

9 Q Who do you get the Lord Tash watches from, Mr. Ullman?

10 A We have, from time to time, obtained these from various
11 sources.

12 Q Would you enumerate them, please?

13 A The firm I named, Schwartz, was one, and I believe a
14 firm by the name of Worldwide at one time furnished us such
15 watches.

16 Q I did not get the end of the answer.

17 A A firm by the name of Worldwide.

18 Q Now, Mr. Ullman, when you make orders for merchandise
19 then the merchandise is received in the store, and in all
20 cases do you receive an invoice with, or at a time near when
21 the merchandise is received in the store?

22 A We always get an invoice for merchandise, of course.

23 Q Would you tell me what happens to these invoices when
24 they arrive at the store?

25 Let me start again. Let me start at the beginning; when

1 employees of New York Jewelry Company who handle these invoices
2 other than you or Mr. Tashoff?

3 MR. MC KEAN: Will you read that back, please?

4 (The question was read by the reporter.)

5 MR. MC KEAN: I think Mr. Epstein is trying to
6 pinpoint a particular one.

7 HEARING EXAMINER LYNCH: He answered the question --
8 or did he?

9 Go ahead.

10 Can you answer the question?

11 THE WITNESS: There may be other employees.

12 By Mr. Epstein:

13 Q Who are the employees specifically?

14 A From time to time, there may have been any number of
15 people, Mr. Epstein.

16 Q I want to know who they are specifically, at any given
17 time. You can tell me the time period, and I want to know
18 the employees specifically who would have access to and handle
19 these bills when they are in the file marked, as you indicated,
20 "paid".

21 A Not necessarily when they are in the file. They may
22 handle them at anytime.

23 Q I want to know who these employees, specifically by
24 name.

25 Q I do not believe I could name any employees specifically,

1 Mr. Epstein.

2 Q Then, let's start another way.

3 Name for me the employees of your store, currently employed,
4 and tell me how long they have been in the employ of New York
5 Jewelry Company.

6 HEARING EXAMINER LYNCH: You are not getting anywhere
7 that way. Names are not going to help the situation. What are
8 you leading up to? What is the final question that you want
9 to ask?

10 The witness has answered with respect to depositing
11 these invoices in an invoice file, and from the invoice file
12 checks are issued to pay the invoice, but from there on he seems
13 not to understand or doesn't know what happens to the invoices,
14 and I assume you are going from there to ask another question.

15 Would you ask the next question?

16 MR. EPSTEIN: Yes.

17 By Mr. Epstein:

18 Q Mr. Ullman, do you recollect that on or about July 8,
19 1966, you were visited by myself and Mr. Gross on the premises
20 of New York Jewelry Company?

21 A I do.

22 Q Do you remember at the time this conversation took place
23 that we discussed certain aspects of the business operations
24 of New York Jewelry Company?

25 A Of course.

1 Q And that the discussions that we had were conducted
2 in the presence of Mr. Gross, and Mr. Tashoff most of the time
3 was also present?

4 A Yes.

5 Q Mr. Ullman, did we discuss with you at that time the
6 sources of supply of various items that you have for sale in your
7 store such as watches and radios and rings?

8 A You did.

9 Q Also at that time, did we go back into the office with
10 Mr. Tashoff and go through the files of invoices that had
11 been paid by New York Jewelry Company?

12 A I do not recall whether they were paid invoices or not,
13 but I know we went through them.

14 Q We went through invoices?

15 A Yes.

16 Q At that time, did I, in the company of Mr. Gross, extract
17 from your business records -- and let me point out -- may I inter-
18 ject -- that I assume these invoices are, as a matter of
19 practice, kept as normal business records of the New York
20 Jewelry Company.

21 A That is correct.

22 Q In the company of Mr. Gross, did we extract certain
23 invoices from those records and business files that you
24 keep?

25 A You did.

1 Q Did we tell you that we were taking them for the purpose
2 of copying them and returning them to you?

3 A You did.

4 Q Did they in fact take them and subsequently return them
5 to you?

6 A You did.

7 Q While we were there, do you recollect we had a conversa-
8 tion concerning various invoices, as to what they were and
9 who they were from and what type of merchandise they repre-
10 sented?

11 A I remember we had such a conversation.

12 Q Now, Mr. Ullman, at that time, did we, in fact, specifical-
13 ly pull from your records and invoices Commission's Exhibit 57
14 from A. Cohen and Sons Corporation which enumerated certain
15 items of small appliances and other goods, and, in fact, did
16 we have a conversation about that invoice?

17 A I do not remember a conversation about this specific invoice
18 Mr. Epstein. It has been some time ago.

19 Q Did I ask you, in the presence of Mr. Gross and Mr. Tash,
20 what these specific handwritten figures are that appear on this
21 invoice in addition to the printing contained thereon?

22 A You may have.

23 Q Did you not, in fact, Mr. Ullman, tell me in the presence
24 of Mr. Gross on that date, that that invoice, that handwritten
25 notation represented the retail price at which those goods 224

1 not objecting. He may be doing it, because of the situation
2 you find yourself in, and that is the reason he has not
3 objected up to now.

4 We will take a short recess.

5 (Short recess.)

6 HEARING EXAMINER LYNCH: Come to order, please.

7 MR. EPSTEIN: With your Honor's indulgence, we will
8 pursue this matter a little further.

9 By Mr. Epstein:

10 Q Mr. Ullman, I want to show you Commission's Exhibit 57
11 which is the invoice from A. Cohen and Sons Corporation for
12 merchandise which was shipped to your store on August 12, 1965.
13 The first item lists two dozen men's wallets. Can you tell me
14 what they sold for in your store at retail, Mr. Ullman?

15 A I would not be able to, Mr. Epstein.

16 Q The second item, Mr. Ullman, the toaster, as described
17 on the invoice. Can you tell me what the price, the retail
18 price, of that was in your store?

19 A No, I could not.

20 Q The third, a toaster, a different model and number, the
21 third item on the invoice. Could you tell me what the cost
22 of that -- what the retail price of that item was in your
23 store, Mr. Ullman?

24 A I could not.

25 Q Am I correct that the figures opposite the description

1 not objecting. He may be doing it, because of the situation
2 you find yourself in, and that is the reason he has not
3 objected up to now.

4 We will take a short recess.

5 (Short recess.)

6 HEARING EXAMINER LYNCH: Come to order, please.

7 MR. EPSTEIN: With your Honor's indulgence, we will
8 pursue this matter a little further.

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11 which is the invoice from A. Cohen and Sons Corporation for
12 merchandise which was shipped to your store on August 12, 1965.
13 The first item lists two dozen men's wallets. Can you tell me
14 what they sold for in your store at retail, Mr. Ullman?

15 A I would not be able to, Mr. Epstein.

16 Q The second item, Mr. Ullman, the toaster, as described
17 on the invoice. Can you tell me what the price, the retail
18 price, of that was in your store?

19 A No, I could not.

20 Q The third, a toaster, a different model and number, the
21 third item on the invoice. Could you tell me what the cost
22 of that -- what the retail price of that item was in your
23 store, Mr. Ullman?

24 A I could not.

25 Q Am I correct that the figures opposite the description

rite 1 of the items in the printed first column are the invoice costs
/67 2 per unit to you of each of the items that are enumerated?

3 A That is correct.

4 Q Now, Mr. Ullman, does it refresh your recollection to refer
5 to the handwritten notations that appear on this statement and,
6 if it does, can I ask you if the handwritten notations opposite
7 the toaster of \$49.50 represent the retail cost of the item in
8 your store?

9 A I can't say that it would, Mr. Epstein.

10 HEARING EXAMINER LYNCH: No. 1, did you make the
11 notation, Mr. Ullman?

12 THE WITNESS: No, Your Honor.

13 HEARING EXAMINER LYNCH: That is not your handwriting?

14 THE WITNESS: No, Your Honor.

15 By Mr. Epstein:

16 Q Is it the handwriting of Mr. Tashoff, Mr. Ullman?

17 A I can't say that it is.

18 Q Do persons other than you or Mr. Tashoff write on the
19 invoices or in any way make notations on the invoices?

20 A I might say, Mr. Epstein, that this is not a usual pro-
21 cedure. We have many, many invoices, and I know of none, other
22 than these, that have any notations on them at all.

23 Q Would you be able to tell me what these handwritten nota-
24 tions represent, Mr. Ullman?

25 A No, I would not.

1 Q Now, Mr. Ullman, coming to Commission's Exhibit 58, which
2 is an invoice from the Bulova Watch Company, which was invoiced
3 to you on the 19th of November of 1965, the first item, the
4 watch, could you tell, as general manager of New York Jewelry
5 Company, what the retail price of that watch was on your
6 premises?

7 A Mr. Epstein, I will say this, with regard to Bulova Watches,
8 when they come in and when they are ticketed in our store, they
9 come in a box. On the outside of the box is the name of the
10 watch and inside the box is the watch and on the watch is a
11 ticket which gives the name of the watch.

12 Now, when that watch is ticketed with our stock ticket,
13 that tag is removed, that little ticket that comes from the
14 Bulova Watch Company is removed, and, frankly, I would not be
15 able to tell you an Engineer K from any other watch.

16 Q Do the retail tickets that you place on the watches indicate
17 or have any indicia of what the watch is, the model number, or
18 the serial number on the watch?

19 A No.

20 Q So what it contained in the ticket, on the retail ticket
21 that the customer sees --

22 A On the retail ticket that the customer sees is our cost in
23 code and the price at which we are offering the watch for sale.

24 Q I am sorry. I missed the first part of your answer.

25

1 MR. EPSTEIN: Would the reporter read it back,
2 please?

3 (The answer was read by the reporter.)

4 By Mr. Epstein:

5 Q That is the only information that is contained in the
6 tickets?

7 A There may be a stock number.

8 Q Do the tickets that you remove from the watches, as you
9 have explained, when you receive them from Bulova, have a price
10 on them?

11 A They do.

12 Q A suggested retail price?

13 A Yes.

14 Q Now, as to the second item on this invoice, the Bulova
15 Craftsman AA watch, can you tell me what that watch retails
16 for in the store, Mr. Ullman, as general manager of the
17 New York Jewelry Company?

18 A As I told you, with regard to the Engineer K, once the
19 ~~ticket is removed, I do not know. I do not know an Engineer~~
20 ~~K from a Craftsman AA.~~

21 Q As to any of these watches that are on this invoice
22 specifically referred to by various names, Mr. Ullman, do you
23 sell any of those watches at the suggested retail price that
24 ~~is on the ticket that you take off the watch?~~

25 A No.

1 Q Now, referring to Commission's Exhibit 59 which is an
2 invoice from the Bulova Watch Company, which is invoiced on
3 the 17th of November, 1965, referring to the first item, a style
4 463 clock radio, can you tell me what that radio sells for
5 on your premises?

6 A No.

7 Q You did offer the radio for sale on the premises?

8 A We did.

9 Q And if they are still available they are still offered
10 for sale?

11 A That is correct.

12 Q As to the other items, the watches, on Exhibit 85, and
13 the various and sundry items on Exhibit 57, those items are
14 still available, are still presently for sale in your store?

15 A I would doubt that any of these items from August and
16 November of 1965 would still be in stock.

17 Q But if you re-ordered the same merchandise, it would
18 still be available in your store?

19 A I would say so, yes.

20 Q Mr. Ullman, referring to Commission's Exhibit 58, I ask
21 you: Do the handwritten notations that appear on this invoice
22 in any way refresh your recollection as to what the retail
23 price of these are in the New York Jewelry Company for these
24 watches?

25 A No, Mr. Epstein.

1 Q Mr. Ullman, as to the Engineer K, does it refresh your
2 recollection that this watch would sell in your premises for
3 \$149.50?

4 A No.

5 Q Now, Mr. Ullman, as to the prices for which you sell these
6 Bulova watches that are referred to in these invoices, do the
7 prices at which you sell these watches at retail -- are they
8 higher or lower than the prices which are on the tickets that
9 you remove from the watches?

10 A The prices are higher.

11 Q So that I am clear on this, Mr. Ullman, as to each of
12 these invoices -- I am sorry. We did not come to the last
13 invoice, Commission's Exhibit 60 which covers materials
14 that are invoiced to you from the Edward A. Waldman Company,
15 the first item of which is Star series watches.

16 Can you tell me what those watches are, whether they are
17 on sale in the premises of the New York Jewelry Company?

18 A I do not believe we have any watches presently from the
19 Edward A. Waldman Company.

20 Q At the time when you did sell the watches that are repre-
21 sented by that invoice, do you have a recollection as to what
22 the retail prices were in your store for those items?

23 A Only to this extent, that this type watch was generally
24 bought as a traffic stimulator and usually priced low.

25 Q Now, on the Bulova watches that you indicated you sold,

1 and reflected by these examples which are reflected by these
2 invoices -- 58 and 59 -- do you have any idea how much higher
3 your prices were than the prices that you -- that were attached
4 to the watches?

5 A There was no fixed format at that time for pricing any
6 individual item.

7 Q But I do understand, if I remember from yesterday, you
8 explained to us that you and Mr. Tashoff were the ones who
9 decided on what the price would be.

10 A I believe that I stated that I was the one who would
11 decide what the price would be.

12 MR. EPSTEIN: My recollection is not complete.

13 If I have not offered Commission's Exhibits 57
14 through 60 in evidence, I make the offer at this point.

15 HEARING EXAMINER LYNCH: They have not been.

16 Is there any objection, Mr. McKean?

17 MR. MC KEAN: Yes, Your Honor. I am going to renew
18 my objection that they show cost and are not relevant, but
19 I understand your ruling on it, and I anticipate what you are
20 going to do.

21 HEARING EXAMINER LYNCH: The same ruling.

22 They may be received.

23 (The documents referred to, heretofore marked as

24 Commission's Exhibits 57 through 60, were received in
25 evidence.)

1 By Mr. Epstein:

2 Q Now, Mr. Ullman, if you need to look at these invoices
3 again, I will ask you specifically for each of these invoices:
4 Can you tell me what the significance is of the handwritten
5 notations that appear on these invoices, 57, 58, and 59?

6 A No, I cannot.

7 Q You have no idea as to what that handwriting represents?

8 A No, I can't tell you.

9 Q Now, as to the sale of eyeglasses, Mr. Ullman, am I cor-
10 rect that in the addition to the purchases from Dal-Tex you

11 also maintained a stock of frames and lenses in your store?

12 A That is correct.

13 Q Now, would you tell us the people who supply these frames
14 to you? Where do you buy your frames for eyeglasses?

15 A Oh, from many sources; Connecticut Optical here in town
16 furnish some of them, and Homer Optical in town furnish some,
17 and some are furnished by William Toll, and some are furnished
18 by Ernest Catay, and some have been furnished by Jan Optical
19 Company, and some have been furnished by Intercontinental
20 Optical Company, and there may be others.

21 MR. EPSTEIN: I will ask the reporter to mark as
22 Commission's Exhibits 116 and 117.-- (handing).

23 (The documents referred to were marked as Commission's
24 Exhibits 116 and 117, for identification.)

25 By Mr. Epstein:

1 you tell me how much you pay for used television sets from
2 the public?

3 A There is no set amount that we pay. It depends upon its
4 condition and its appearance and its working order, and so forth.

5 Q Am I correct that you would be the one who would make
6 the decision ultimately as to what price would be paid for it?

7 A As a rule.

8 Q Would you tell me what the average price is that televisions
9 bought from the consuming public -- What have you paid in the
10 last year for those sets?

11 A We might buy them for as little as \$2 or \$3 and pay as
12 much as much as \$35 or \$40 for them.

13 Q And how about from the Salvation Army? What would your
14 answer be if I asked you the same question?

15 A Generally, we have not bought any from there for some time.
16 When we did buy them, we would buy whatever sets they had at
17 the time, as is, regardless of appearance and regardless of
18 workability, and we paid them, I believe, \$5 apiece for them.

19 Q How many television sets -- I am satisfied now that you
20 have not bought from the Salvation Army for some length of time.
21 How many television sets in the past 12 months have you bought
22 from the consuming public?

23 A I could not say.

24 Q Do you have an idea, as manager of the store?

25 A There have been a number of them. I do not keep track

1 of the number of sets that we purchase from the public.

2 Q As many as 500?

3 A Oh, no; I would not believe that many.

4 Q As many as ten?

5 A As many as ten -- Over a period of a year, I would say
6 it would be more than ten.

7 Q On the television sets that you purchased from J. R.
8 Enright as is, do you have these sets reconditioned?

9 A We keep a technician employed, as a rule, to repair those
10 that are repairable. Some of them are not repairable at all.
11 Some of them are not worth repairing. Some of them need extensive
12 repairs.

13 Q Now, coming back to the eyeglasses, Mr. Ullman, and the
14 optical services that you render, the selling of eyeglasses.
15 When a person comes in and is prescribed eyeglasses, I want to
16 pose a hypothetical question to you so we under the situation
17 I am trying to ask you concerning.

18 A person comes in to the New York Jewelry Company and he
19 comes for an eye examination, and it is determined that glasses
20 are needed for him, and he then orders glasses, and he pays
21 for them, and the price that he is charged and that he agrees
22 to pay for, is there a breakdown of the cost to this customer,
23 as to what he is paying for the lenses and frames?

24 A No.

25 Q Are the customers who wear these glasses charged an

1 examination fee?

2 A There is just one charge made for the entire service,
3 Mr. Epstein, and no breakdown of such services.

4 Q And in no case is a customer -- I do not want to put words
5 in your mouth, but I want you to tell me. Is there any case
6 where the customer is advised as to a breakdown of the various
7 component services that he or she is being given?

8 A No.

9 Q Now, Mr. Ullman, at the outset we were talking, I think,
10 briefly, about the customers who trade with you. I think
11 we talked about the credit applications. I would like you, for
12 myself and for the Hearing Examiner, to give me a profile and
13 explanation and characterization of the typical customer that
14 trades in your store. Can you do that for us?

15 A I do not believe I understand your question, Mr. Epstein.

16 Q Well, I do not want to lead you, Mr. Ullman. I want you
17 to just tell me. Certain people, a certain body of people,
18 trade in a store, and I am interested in having you tell me
19 what kind of people are these people that trade in your store.
20 What are their incomes? You have their credit applications,
21 and you see these people from day to day. You are the general
22 manager of the store. I would like to ask you if you would
23 profile for me the typical customer that trades in your store.

24 MR. MC KEAN: I object. Establish whether he can.

25 MR. EPSTEIN: I do not think there is any question

1 it, if you can.

2 MR. EPSTEIN: I will bracket it.

3 By Mr. Epstein:

4 Q An annual income of less than \$3,500 a year?

5 A I would not say that that is so.

6 Q Are the preponderent number of customers that you deal
7 with Negroes, Mr. Ullman?

8 A I would say "Yes".

9 Q Are the places in which these people reside primarily
10 the Northwest section of the District of Columbia?

11 A I would not say so.

12 Q Are they preponderantly from the District of Columbia
13 proper?

14 A I would say that the majority of our customers live within
15 the District, yes.

16 Q More than 90 per cent of them?

17 A I can't answer such a question.

18 Q Do most of your customers who trade in New York Jewelry
19 present to you -- and I am asking you based on the knowledge
20 you have of their credit applications. Do they present to you
21 a picture of people who have lived at their residences for
22 longer than two years?

23 A They may have lived at their residences for any length of
24 time, Mr. Epstein.

25 Q Well, specifically, are there more that have lived a brief

1 By Mr. Epstein:

2 Q Mr. Ullman, would I be correct to ask you -- or if I were to
3 make a statement that it is a fact that the great majority of
4 your customers are principally of the low income group?

5 MR. MC KEAN: I object to that as argumentative and
6 conclusionary and leading.

7 HEARING EXAMINER LYNCH: The objection is sustained.

8 MR. EPSTEIN: Coming back -- if I may ask for an
9 exception.

10 HEARING EXAMINER LYNCH: The exception is noted.

11 (EXCEPTION NOTED)

12 HEARING EXAMINER LYNCH: Ask the next question.

13 MR. EPSTEIN: I will ask the reporter to mark this as
14 Commission's Exhibit 122 for identification, please.

15 (The document referred to was marked as Commission's
16 Exhibit 122, for identification.)

17 By Mr. Epstein:

18 Q Mr. Ullman, I will call your attention to Commission's
19 Exhibit 122, for identification. Can you tell me what this is?

20 A Yes. This is an invoice for transistor radios purchased
21 from Biddle Purchasing Company.

22 Q Were these radios offered for sale on the premises of the
23 New York Jewelry Company?

24 A They were.

25

1 Q And offered at retail to the consuming public?

2 A They were.

3 Q Are you familiar with the merchandise reflected by this
4 invoice?

5 A Very well.

6 MR. EPSTEIN: I offer this in evidence.

7 MR. MC KEAN: This, again, if I may have a continuing
8 objection, shows cost.

9 HEARING EXAMINER LYNCH: I am sure the record
10 shows that.

11 MR. MC KEAN: No objection; other than that.

12 HEARING EXAMINER LYNCH: I think I made it clear
13 yesterday that I understood your objection and that, so far as
14 the invoices were concerned, the price situation -- And an
15 exception will be noted, even though it was received in
16 evidence.

17 ~~EXCEPTION NOTED.~~ (EXCEPTION NOTED.)

18 (The document referred to, heretofore marked as Com-
19 mission's Exhibit 122, for identification, was received
20 in evidence.)

21 By Mr. Epstein:

22 Q Do you have a recollection -- refreshing your recollection
23 by referring to Commission's Exhibit 122, do you recollect when
24 those radios were offered for sale on the premises of the
25 New York Jewelry Company they had a price tag on them in the

1 nature that you indicated to us, or put on your merchandise?

2 A I do.

3 Q Did they have a price tag on them?

4 A They did, Mr. Epstein.

5 Q Am I correct that those radios that are referred to in
6 that invoice, Commission's Exhibit 122, bore the tradename
7 "Master Tone"?

8 A They did.

9 Q Would you tell us what the price was on the price tickets
10 of those radios?

11 Do you recollect?

12 MR. MC KEAN: I object. What time is Mr. Epstein
13 referring to?

14 HEARING EXAMINER LYNCH: The objection is sustained.

15 MR. EPSTEIN: On or about July 8, 1966.

16 By Mr. Epstein:

17 Q Mr. Ullman, do you know if those radios were offered for
18 sale and available on the premises of New York Jewelry
19 Company?

20 A They were.

21 Q Did they at that time, on or about July 8, 1966, have a
22 price tag on them?

23 A They did, yes, sir, Mr. Epstein.

24 Q Do you recollect what that retail price tag was?

25 A I do very well recollect what the price tag was.

1 Q Can you tell us what the price tag was on those radios?

2 A I would like to preface my stating what the price tag
3 was.

4 MR. EPSTEIN: May I ask that the witness first answer
5 my question, and if it needs explanation he may so explain.

6 HEARING EXAMINER LYNCH: Answer the question first;
7 and then if you have any explanation, go ahead.

8 THE WITNESS: Very well. These radios had a price
9 tag on them of \$59.50 at the time you and Mr. Gross came
10 into the store.

11 Q All of them, or for specifically certain ones?

12 A I believe it was for a certain portion of these radios.

13 Q Would that have been the ten transistor radios that had a
14 price of \$59.50?

15 A Very possibly, yes.

16 Q Do you recollect what the retail price was for the radios
17 indicated on that invoice, as to the six and eight transistors?
18 Do you remember what the retail price was?

19 A No, I do not.

20 Q Did the six and eight transistor radios also have price
21 tags on them?

22 A They probably did, yes.

23 HEARING EXAMINER LYNCH: Now, what explanation did you
24 want to make, Mr. Ullman?

25 MR. MC KEAN: Your Honor, I would like to make a state-

1 ment here. We have provided Commission's counsel with a
2 variety of records showing what happened to each and every one
3 of those radios on there. I think it would be more revealing
4 since the exhibits are going to be in -- I will offer them in.
5 Mr. Epstein has not, and I take it he does not intend to, but
6 I have no objection to that. I wish we could ask Mr. Ullman
7 to save his explanation until I can present him with the docu-
8 ments and explain it in that fashion.

9 HEARING EXAMINER LYNCH: All right. Go ahead.

10 By Mr. Epstein:

11 Q I think we are entitled, at the end of the examination
12 of this witness --

13 HEARING EXAMINER LYNCH: Let me ask you this: How
14 long do you propose to continue?

15 (Discussion was had outside the record.)

16 By Mr. Epstein:

17 Q Mr. Ullman, referring to the radio commercial that we
18 talked about -- I believe it was yesterday -- can you tell me
19 how often you used the radio commercials, how frequently they
20 appeared on the radio?

21 A We generally run -- and this is my best recollection --
22 about ten spots a week on each station, I believe.

23 Q You mean that there are ten spots on WUST and ten spots
24 on WOOK?

25 A Yes.

1 Q How often do you use the newspaper, Mr. Ullman?

2 A Occasionally; not with the regularity that we use the
3 radio advertising.

4 Q And what newspapers do you advertise in?

5 A Principally in the News.

6 Q In the Washington Daily News?

7 A Yes, the Washington Daily News; yes.

8 Q Referring you, if you need to refresh your recollection,
9 to Commission's Exhibit 114, the advertisement about discount
10 eyeglasses, can you tell me how long that advertisement ran in
11 the Washington Daily News?

12 A This ran periodically -- that is, maybe once a week for,
13 I believe, probably a year and a half.

14 Q So that we can understand the time period, Mr. Ullman,
15 would this advertisement that appeared on the date at the
16 end of January of 1965, would that have been the beginning,
17 the middle or the end of this ad campaign?

18 A I do believe that this ~~either~~^{was neither} the beginning or the end
19 but it may ~~not~~ be the middle.

20 Q Mr. Ullman, do you know how many suits for judgment are
21 filed in the Court of General Sessions by the New York Jewelry
22 Company in a year?

23 HEARING EXAMINER LYNCH: Didn't we go into that
24 yesterday?

25 MR. EPSTEIN: Did we? I am sorry.

1 exhibit. It is not in evidence. That question, among others,
2 was asked before.

3 HEARING EXAMINER LYNCH: The objection is sustained.

4 By Mr. Epstein:

5 Q Mr. Uilman, have you seen Commission's rejected Exhibit
6 51?

7 MR. MC KEAN: Objection.

8 HEARING EXAMINER LYNCH: He has seen it. He did not
9 know anything about it. He did not prepare it. All his know-
10 ledge, concerning the exhibit after you showed it to him, con-
11 sisted of looking at it and reading what it says. He did not
12 prepare it. He is not the proper party to discuss it. He gave
13 you what the gross sales were. And I think Mr. McKean was
14 agreeable to giving you that information. That is my recol-
15 lection. Is that correct?

16 MR. MC KEAN: That is correct.

17 MR. EPSTEIN: For the purposes of the record, may we
18 establish then, if Mr. McKean is willing to get the gross sales,
19 that we may have the exact dollar figure of gross sales?

20 HEARING EXAMINER LYNCH: Going back to 1965?

21 MR. MC KEAN: Yes, your Honor.

22 HEARING EXAMINER LYNCH: What is the figure?

23 MR. MC KEAN: The exact dollar figure for 1965 was
24 \$355,378. -- that is \$379 -- 84 cents. (\$355,379.84)

25 MR. EPSTEIN: And for 1964?

1 MR. MC KEAN: If you will give me a minute, I may be
2 able to find it.

3 The comparable figure for 1964 is \$271338.08.

4 I do not have the comparable figure for 1965. I have
5 been informed by the accountant that the figures have not been
6 finished. He has been working on other things.

7 MR. EPSTEIN: No further questions.

8 MR. MC KEAN: Before I start the witness' cross-
9 examination, I do feel impelled to make the very briefest
10 of statements on what Mr. Epstein is doing and has been doing.

11 He is asking now for the gross profit. Subtracting
12 one from the other gives you the gross cost, the cost of goods
13 sold. This is precisely, exactly, what you ruled on, and you
14 ruled on it clearly and cogently. This is the third time he
15 has come back to it.

16 HEARING EXAMINER LYNCH: You can't blame him for
17 trying for trying, can you, Mr. McKean?

18 MR. MC KEAN: I hate to blame anybody for trying,
19 but I think it is improper to continue.

20 HEARING EXAMINER LYNCH: I have sustained your objec-
21 tion.

22 CROSS-EXAMINATION

23 By Mr. McKean:

24 Q Mr. Ullman, I am going to refer you to what has been
25 marked and received as Commission's Exhibit 60. It is an

1 invoice from the Edward A. Waldman Company, dealing with a
2 purchase of the New York Jewelry of some watches.

3 I believe you testified yesterday, in response to
4 one of Mr. Epstein's questions, that this merchandise was used
5 as a traffic stimulator, and that the price on it, your retail
6 price, the price you would have charged was low. Can you tell
7 me or give me any idea of what you meant by "low"?

8 A These watches were displayed in the window, some of these
9 watches, at \$4.95. Others of them would have probably been
10 offered for sale at perhaps \$9.95.

11 Q To your recollection, were they actually sold at \$9.95?

12 A Yes.

13 Q Mr. Ullman, there has been some testimony, stipulated
14 testimony, and I believe this came up on your direct, regard-
15 ing a man standing outside the door who gave cards to
16 passersby.

17 Now, can you tell if you did employ a man to stand
18 outside the door to hand cards to passersby?

19 A Yes.

20 Q Was the man given any instructions?

21 A He was.

22 Q What were the instructions that the man was given?

23 A He was told to stay behind our building line, to hand out
24 the cards, and to say "Step inside for a free gift".

25 Q Was he told to say anything else besides that?

1 is asked of the customer.

2 By Mr. McKean:

3 Q Do you ask for additional information sometimes?

4 A There may be such occasions.

5 Q Do you always ask for such information as is on that card?

6 A I can't say that all of this information is always requested.

7 Q When somebody comes in for credit, do you make inquiry
8 from him if they have had credit or credit accounts at other
9 stores, establishments, or from other sources?

10 A We do.

11 Q Do you ask them the length of their residence, whatever
12 it is that they have given as their residence?

13 A We do.

14 Q Do you make any check, any kind of check, of the informa-
15 tion they give you?

16 A We do.

17 Q What sort of check do you make?

18 A We verify the residence they give and the job they say
19 they work at. We call the stores at which they say they had
20 credit, or any other companies at which they say they have had
21 credit. We check through a file of garnishments that we main-
22 tain on a daily basis, to see if they have had their salary
23 attached by anyone else. We occasionally call the personal
24 references that they may give and ascertain certain other
25 information by verifying books or cards that they may bring

1 object to the question. We have not qualified this man as
2 an optometrist expert, to testify as to the magnitude or type of
3 prescription, for him to discourse on this subject, and I cer-
4 tainly think it is outside the scope of previous examination,
5 and I did not qualify the man as an expert to testify on
6 prescriptions.

7 HEARING EXAMINER LYNCH: The objection is sustained.
8 Mr. Ullman is not an optometrist.

9 MR. MC KEAN: I am willing to qualify him, so he can
10 answer the question.

11 By Mr. McKean:

12 Q Mr. Ullman, you are not an optometrist, are you?

13 A No.

14 Q Are you an optician?

15 A I am.

16 Q What does an optician do?

17 A An optician does a variety of things, grinding lenses,
18 reading prescriptions from lenses, determining the power of
19 lenses, assembling glasses, fitting and adjusting and dispensing.

20 Q How long have you been an optician?

21 A Probably 25 years.

22 Q Opticians are not licensed by any governmental body?

23 A No.

24 Q This is a skilled trade or calling. Is that a fair
25 description of it?

1 fact, isn't it, that you must purchase lenses and frames, and
2 that they are element of your cost and so forth?

3 A That is correct.

4 Q Now, what other services do you provide, or must you make
5 provision for in order to provide the service that you give to
6 the customers?

7 A Well, of course, there has to be the labor involved in
8 manufacturing, or whatever we want to refer to, the grinding,
9 the edging of the lenses, and inserting them. There must be
10 the equipment to do these things. We use a number of people
11 at the store, as messengers, to pick up components when necessary,
12 to put the glasses together, or to furnish the materials so they
13 can be put together.

14 Then, there is the sales help, of course, engaged in
15 helping the patients select frames, and so forth. There is the
16 optometrist, of course; the clerical help involved in waiting on
17 customers.

18 Q Mr. Ullman, do you presently employ a full-time optician?
19 Presently?

20 A Presently, no.

21 Q Did you last year?

22 A Yes, we did.

23 Q Up until when?

24 A Somewhere around the end of the year.

25 Q Did you employ one prior to last year?

A Yes.

1 Q Full time?

2 A Full time.

3 Q Do you provide same-day service on eyeglasses?

4 A We do.

5 Q Is that in all cases, majority of cases, some cases, or
6 what?

7 A That is in the majority of cases.

8 Q One-day service? Same day?

9 A While-you-wait service, really.

10 Q Do you maintain a large stock of lenses?

11 A We do.

12 Q Do you have to maintain a large stock of frames?

13 A We do.

14 Q You presently have an optometrist, a Dr. Dantzic, and you
15 pay him a salary, computed on the number of examinations.

16 Have you had optometrists previously, before Dr. Dantzic,
17 other optometrists?

18 A We have.

19 Q Did you have different salary arrangements with them?

20 A We did.

21 Q Can you give us an idea of some of the arrangements you had
22 in the past with optometrists?

23 A We have had other salary arrangements, even with Dr.
24 Dantzic.

25 Q Just give me some idea of the arrangements.

1 A We paid them flat salaries of up to \$350 a week. Others
2 have been on a fee basis, similar to Dr. Dantzic's, with cer-
3 tain commissions on volume.

4 Q Now, with regard to Dal-Tex Optical, they are located
5 in the city of Washington, are they?

6 A No, they are not.

7 Q They cannot provide one-day service.

8 A That is right.

9 Q What portion of your eyeglass business is done with Dal-
10 Tex?

11 A It is a small portion.

12 HEARING EXAMINER LYNCH: What do you mean by
13 small, Mr. Ullman?

14 A moment ago, you said you gave one-day service;
15 immediate service on the premises.

16 But now, in the light of that answer, how much business
17 do you do with Dal-Tex?

18 THE WITNESS: My best judgment would be that we send
19 Dal-Tex an average of perhaps five jobs per week, maybe as
20 high as eight or ten.

21 HEARING EXAMINER LYNCH: Would that constitute the
22 bulk of your business that would not be done on the premises, so
23 to speak, daily?

24 THE WITNESS: That would be the bulk of the business.

25 HEARING EXAMINER LYNCH: Go ahead, Mr. McKean.

1 By Mr. McKean:

2 Q Mr. Ullman, does Bulova Watch Company sell any watches
3 that have wholesale costs to a retailer of \$125 to \$150?

4 A They do.

5 Q Do you ever retail any such watches?

6 A On occasion.

7 Q Do you buy such watches directly from Bulova or from a
8 middleman?

9 A Ordinarily, we do not stock such a watch, and it would
10 probably be purchased from another jeweler.

11 Q With regard to Commission's Exhibit -- let me direct your
12 attention to Commission's Exhibit 114. This is an advertisement
13 for eyeglasses. This is for eyeglasses made while you wait,
14 and the price includes \$7.50, and I believe Mr. Epstein asked
15 you how many pair of such eyeglasses you may have sold in a
16 year and you gave an estimated answer. Now, my question --

17 MR. EPSTEIN: I would have to just interject an objec-
18 tion that we did not cover the \$7.50 eyeglasses. We talked
19 only about the advertisement for glasses offered at \$7.50.

20 MR. MC KEAN: This is just to focus the witness'
21 attention on the subject. My question is with regard to the sale
22 of such \$7.50 eyeglasses.

23 By Mr. McKean:

24 Q Did you ever disparage \$7.50 eyeglasses to anybody?

25 A No.

HEARING EXAMINER LYNCH: Exhibits 57, 58, and 59?

MR. MC KEAN: Yes, Your Honor.

By Mr. McKean: .

Q Are those notations in your handwriting?

A They are not.

Q I believe you said that you can't identify them as your handwriting?

A That is correct.

Q Or anybody else's handwriting?

A No, sir.

Q Now, these notations -- just so we know what we are talking about.

This group of notations appear to be price notations, and Mr. Epstein has said, I believe -- or at least he seemed to be claiming that these were retail price notations, and so forth.

Now, is it store policy to put price retail notations on invoices?

A No, it is not.

Q Is it the store's practice to put retail price notations on invoices?

A No, it is not.

Q Has it ever been?

A No.

Q Are you familiar with such notations?

A To my knowledge, these three invoices are probably the

1 MR. EPSTEIN: As a matter of fact, I cannot check it,
2 to this extent: The invoices that were taken from New York
3 Jewelry and returned, I will aver to Your Honor, I do not think
4 that there is any question about this, that we returned exactly
5 the number we took. Some of them were not duplicated. We took
6 invoices. We attempted to disrupt the business as little as
7 possible at the time we made the visit. We pulled many invoices,
8 many of which, after we got to the Federal Trade Commission's
9 office for purposes of photocopying, we did not photocopy, to
10 the extent that he asked me: "Are these the ones we took, other-
11 than the ones we got photocopied?" And these, I know specific-
12 ally, we have put in evidence, and those that we supplied to
13 Respondent's counsel under the prehearing order to supply all
14 documents on which we intended to rely -- that is to the best
15 of my knowledge, at this point, as to the amount that I can
16 aver as to whether or not these are invoices taken from New
17 York Jewelry, and I have no better recollection than that.

18 MR. MC KEAN: I don't suppose we have a real impasse
19 here, because Mr. Epstein and I have been able to work this
20 sort of thing out in the past. I am willing to execute an
21 affidavit that these are all that were turned over to me by
22 Mr. Aronoff, and turned over to him by Mr. Epstein, after
23 having been taken from the files of the New York Jewelry
24 Company by Mr. Epstein.
25

If Mr. Epstein will stipulate with me --

HEARING EXAMINER LYNCH: Are you referring to

Respondent's Exhibits 1 to 27?

You referred to three or four other categories.

MR. MC KEAN: I do not want to spend all day or clutter the record. I can provide a list for the reporter so we will not have to spend so much time doing it here.

MR. EPSTEIN: It is my recollection, as a matter of fact, that these documents were not returned to Mr. Aronoff. That has been referred to here.

These documents were personally returned by Mr. Gross and myself to the premises of the New York Jewelry Company where they were taken from.

MR. MC KEAN: There is not another invoice with any kind of markings on it. I want a statement that these are the invoices they took.

MR. EPSTEIN: If that is what we are driving at, that there were no more invoices that had markings on them, I am willing to stipulate to it. I am willing to stipulate that the invoices in the record that have the markings on them are the only invoices that existed. I take that back. I got carried away -- that we saw in New York Jewelry Company -- those are the only invoices that had markings on them, and you do not have to put it in the record and go to the expense of a record that runs to some fifty documents to prove a simple

1 point that the documents that are already in evidence are the
2 only ones which Commission's counsel saw on the premises of
3 New York Jewelry Company had penned notations on them other
4 than a notation indicating that the bill may have been paid.

5 In other words, as we characterized it, there were,
6 in fact, price notations.

7 MR. MC KEAN: I think that is fair.

8 I am going to offer them in evidence.

9 I will decide whether to put the remaining documents
10 in, and if I do I will prepare a list, and we can hand it in,
11 in only two or three minutes.

12 HEARING EXAMINER LYNCH: You are offering Respondent's
13 1 through 27? Is that correct?

14 Is there any objection?

15 MR. EPSTEIN: To the extent that I would like to know
16 the reason why they are being offered?

17 Is that the reason that these are not -- that they do
18 not have any price marks on them?

19 MR. MC KEAN: That is correct.

20 MR. EPSTEIN: My question is: Is this proper cross-
21 examination, or is more in the line of respondent's case?

22 HEARING EXAMINER LYNCH: I assume you do not
23 object to respondent putting in these exhibits which you brought
24 out with respect to J. R. Enright and some of the others?

25 You do not want me to have Mr. Ullman come back as a

1 witness for the respondent and testify to these matters and
2 introduce these exhibits that way?

3 Do you have any objection to the receipt of these
4 exhibits into evidence?

5 MR. EPSTEIN: No objection, subject to their relevancy
6 and materiality.

7 HEARING EXAMINER LYNCH: They may be received.

8 (The documents, heretofore marked as Respondent's
9 Exhibits 1 through 27 for identification, were received
10 in evidence.)

11 By Mr. McKean:

12 Q Referring again to Commission's Exhibit 57, 58, and 59,
13 do you have any reason to believe that the pencil notations
14 on those invoices actually represent the retail prices charged
15 for the merchandise covered by those invoices?

16 A No, sir, I do not.

17 Q Do you recall the prices charged for such items in 1965,
18 and I guess it was early in 1966?

19 A No, sir, I do not.

20 Q A-1 right. Mr. Ullman, on your direct examination you
21 were asked some questions about eyeglass frames furnished you
22 by Toll Optical, and I believe that some of Mr. Epstein's
23 questions were directed to purchases by you of eyeglass frames
24 in bulk, and you gave certain testimony as to prices, and so
25 forth. If you buy eyeglass frames singly, do they cost more

1 Exhibit 123, for identification.)

2 By Mr. Epstein:

3 Q Mr. Ullman, I will show you what is Commission's Exhibit
4 123, for identification, and ask you if that is a copy of the
5 credit card that we talked about on direct examination and
6 that Mr. McKean further discussed with you in cross-examination?

7 A Yes, they appear to be duplicates.

8 Q Now, understanding that we have just a photocopy here,
9 Mr. Ullman, I want to clarify exactly, what this looks like
10 without being photocopied. Am I correct that this is a white
11 card with black printing on it?

12 A That is the usual form.

13 Q And that the lower left-hand section of the card is
14 perforated, and that it would be attached to the card.

15 A That is correct.

16 MR. EPSTEIN: I offer in evidence a photocopy of the
17 credit card we discussed.

18 MR. MC KEAN: No objection.

19 HEARING EXAMINER LYNCH: It will be received.

20 (The document referred to, heretofore marked as
21 Commission's Exhibit 123 for identification, was received
22 in evidence.)

23 By Mr. Epstein:

24 Q Now, Mr. Ullman, directing your attention to Commission's
25 Exhibit 123, the lower left-hand portion of this, that is

1 detachable and is headed, within the border, "Credit Card".

2 Now, the statement says that it certifies that the bearer
3 is entitled to AAA 1 preferred credit. Is that a true state-
4 ment, Mr. Ullman?

5 A This card, as I explained earlier, was originally sent to
6 our accounts, sent through the mail, and sent with that intent,
7 yes.

8 Q Mr. Ullman, we have discussed and you explained, without
9 characterizing your testimony, some information to us that this
10 was also passed out to passersby on the street, and I want to
11 know: Is that statement a correct statement, "Yes" or "No",
12 that the bearer is entitled to AAA Preferred Credit?

13 A This was passed out to customers on the street. It was
14 subsequently changed, and the change was made because we
15 recognized that defect.

16 Q Mr. Ullman, was this the card that you were using in
17 July of 1966?

18 A I believe that it was, yes.

19 Q And, Mr. Ullman, in July of 1966, does the statement appear
20 that is contained in this credit card, that the bearer is a
21 AAA-1 preferred customer -- is that a true statement? Answer
22 my question if you can, "Yes" or "No".

23 MR. MC KEAN: I object to the question, Your Honor.
24 I do not understand what he means by a true statement. Why
25 doesn't he ask what the store intended by the statement?

1 Q As to what you have marked here as to other accounts, does
2 the statement appearing on the application: "Does he have
3 other accounts?" (Name and address)". Does that mean that
4 Minnie Alice Henry does not have any other accounts?

5 A I would assume that is what it would mean.

6 Q Now, directing your attention to Commission's Exhibit 36,
7 the application for credit of James Edward Freeman. Mr. Ullom,
8 I note that midway in this card, after line 12 and before line
9 13, there are some circled notations. Would you tell me what
10 the "W" over "C" stands for?

11 A "W" is white and "C" is colored.

12 Q There is a circle around the "C". What does that designate?

13 A It indicates this individual is colored.

14 Q Would you also tell me what the "M" over "F" is in the
15 next bracketed space?

16 A "M" indicates male and "F" female.

17 Q You indicate this applicant was a male.

18 A Yes.

19 Q Would you tell us what "S" over "M" -- and the "S" is
20 circled. Could you tell us what that means?

21 A That would indicate that he was single.

22 Q And as to the last column, there is an "R" over a "B".
23 Would you be able to tell me what that "R" and "B" means?

24 A That indicates room and board.

25 Q Now, as to James Freeman's application, in the space where

1 from five to ten orders per week are sent to Dai-Tex for being
2 filled?

3 A That was my estimate.

4 Q And am I correct that Commission's Exhibit 115 indicates
5 that there are approximately 1400 eyeglasses a year sold by
6 New York Jewelry Company?

7 A That is the indication.

8 Q Am I correct that as a minum 250 and to the range of 500
9 pairs of glasses a year are ordered by New York Jewelry from
10 Dai-Tex?

11 A I could not say that, Mr. Epstein. It would be pure guess.

12 Q Well, perhaps we will make the computation a little more
13 carefully.

14 MR. MC KEAN: I object to this line of questioning.
15 He has gotten the estimates on the number per week.
16 He has a figure for the entire thing.

17 What is the point of going into it?

18 MR. EPSTEIN: There is a clear point. He said a
19 small number of customers are serviced with glasses that are
20 ordered from Dai-Tex, and I want the record to indicate clearly
21 that we do not have a small number. We have closer to approach-
22 ing one-third of the number of customers who are serviced
23 with glasses at New York Jewelry who do not have while-you-
24 wait service and are not serviced from the stock on hand at
25 New York Jewelry Company.

1 MR. MC KEAN: He estimated that from five to possibly
2 -- I believe ten might be sent per week, and if Mr. Epstein can
3 do the arithmetic on that, compare the total, it comes out, on
4 the basis of that estimate, to something in the neighborhood of
5 250, and if he wants a more precise answer, why argue with the
6 witness?

7 HEARING EXAMINER LYNCH: Ask the next question, Mr.
8 Epstein.

9 By Mr. Epstein:

10 Q Do you have eyeglasses made up for you by local eyeglass
11 manufacturing companies?

12 A Very occasionally.

13 Q Now, in numbers, how many pairs of glasses are made up for
14 you by local companies?

15 A Possibly, one a month over a period of time, but it is a
16 very small number.

17 Q Now, we discussed the question as to the arrangements you
18 had with an optometrist, on cross-examination.

19 Am I correct, Dr. Dantzic is not on salary with New York
20 Jewelry Company at this time?

21 A Currently, he is on a per-examination basis, as I explained,
22 and, if I am not mistaken, he gets a small additional fee for
23 the services he might perform in assisting in manufacturing the
24 glasses.

25 Q Does Dr. Dantzic, in fact, act in the capacity of optician

1 in making eyeglasses?

2 A On occasion.

3 Q Are the eyeglasses made on your premises?

4 A Yes.

5 Q And what fee does Dr. Dantzic get for making eyeglasses?

6 A I am not sure, but I believe it is between \$10 and \$25
7 per week.

8 Q Now, coming back to Commission's Exhibits 57 through 59
9 which are the invoices that contain the notations, so that we
10 have no question on this subject I wish to pursue one further
11 question on that.

12 At the time that Mr. Gross and myself visited the premises
13 of New York Jewelry and in the presence of you and Mr. Tashoff
14 selected the invoices, Mr. Ullman and Mr. Tashoff selected
15 invoices from the files that were kept in the offices on the
16 premises of New York Jewelry Company.

17 Am I correct that when those invoices were pulled from the
18 files, the notations in question were on them at that time?

19 A I believe they were, yes.

20 Q And we, in fact, had a conversation concerning those nota-
21 tions at that time.

22 A Perhaps.

23 Q Now, as to the used television sets that you discussed
24 with Mr. McKean on cross-examination, do I understand that
25 you buy television sets from J. R. Enright, Mr. Ullman, that

1 What is the garnishment file that you keep daily? Where is
2 the record?

3 A It is in the store.

4 Q And how do you get this record?

5 A We have a thermofax machine that is located in the clerk's
6 office at the court. When the garnishment law came into
7 effect, which was sometime in 1959, I believe, I got permis-
8 sion of the court to send an employee down each day and photo-
9 graph these garnishment cards, the garnishment card that is
10 necessary to be filed with each garnishment, and we have kept
11 this file up since the inception.

12 Q How about the file of your own garnishments?

13 Do you keep a separate file as to those?

14 A No, they are all in together. The copies of these garnish-
15 ment cards are all in together.

16 Q So that I understand what you are saying, Mr. Ullman,
17 you are telling me that you make copies of all the garnishments
18 that are filed, and that includes not only your own but every
19 garnishment that is filed in the Court of General Sessions
20 in the District of Columbia, from whatever source they may
21 be?

22 A That is right.

23 Q And your own are contained therein?

24 A Yes, sir.

25 Q Do you keep a separate record, or is there a separate

1 account kept in the premises of New York Jewelry as to the number
2 of garnishments you file weekly, monthly or annually?

3 A No.

4 Q Where are those records indicated? Is there a notation
5 or a record separate from just this file, of your own garnish-
6 ments?

7 A Our individual ledger cards would indicate whether or
8 not a garnishment was filed.

9 Q Would the individual ledger cards indicate whether this
10 garnishment was satisfied?

11 A It would indicate whether or not the account was paid
12 or not, whether through garnishment or any other means.

13 Q Now, we had some discussion about the fact that you are
14 an optician. Would you tell us what undergraduate college you
15 attended?

16 A I did not attend any undergraduate college.

17 Q Would you tell us the name and location of the high school
18 you graduated from?

19 MR. MC KEAN: Objection.

20 HEARING EXAMINER LENCH: The objection is sustained.

21 MR. MC KEAN: That is not relevant.

22 By Mr. Epstein:

23 Q In the course of your duties as an optician, do you
24 prescribe glasses?

25 A No.

1 it is taken care of at that point.

2 Q Now, what is the determination, Mr. Ullman, as to whether
3 the prescription that is written for all these patients is
4 sent to Dal-Tex or is made up in your premises?

5 A This is dependent upon whether these are stock lenses
6 or not.

7 Q What is a stock lens, Mr. Ullman?

8 A A stock lens -- that is, most single vision lens, and
9 what are referred to as minus or spherical bifocals.

10 Q Now, this individual that you have described to us at
11 some period of time passed out these credit cards which are
12 Commission's Exhibit 123, in evidence. Is he a regular employee
13 of New York Jewelry Company?

14 A When he was passing out these cards, he would have been
15 a regular employee of New York Jewelry Company.

16 Q Was that his sole function?

17 A No.

18 Q What else would he have done?

19 A He may have been a clerk, or his duties may have been
20 to clean up, or he may have had any number of other duties.

21 Q You talked with Mr. McKean about certain instructions
22 that were given to this man, and no others.

23 Did you or Mr. Tachoff, from time to time, go out and
24 stand in front of the store? Did you establish specifically
25 that this man was complying with your instructions?

1 is not particularly meaningful.

2 MR. EPSTEIN: The point is well taken.

3 Let's come to the first, a number of glasses at \$18.

4 By Mr. Epstein:

5 Q Would you tell me what those eyeglasses are that the
6 patient would have purchased for \$18?

7 A From that statistic I would not be able to tell you what
8 they might be.

9 Q Mr. Ullman, can you tell me why it would be that the
10 eyeglasses that you have advertised for sale at \$7.50 are not
11 reflected in the sales for this period of time?

12 A If I am not mistaken, this advertisement was not running
13 this period of time.

14 Q Assuming that we, as we have indicated, can characterize
15 or annualize these sales for the year previous to the time
16 indicated there, would you indicate to me, if you have offered
17 eyeglasses at \$7.50 a pair and what would be the reason why
18 no \$750 eyeglasses were sold?

19 A I don't follow your reasoning there.

20 Q Let's start it this way: You had an advertisement in the
21 paper that you indicated to me ran for approximately a year
22 and a half. That is in evidence as a Commission's Exhibit --

23 I believe it is Commission's Exhibit 114, the Washington Daily

24 News of January 29, 1965; Commission's Exhibit 114. Without

25 having it in front of you, are you familiar with the ad?

1 A I am familiar with the ad.

2 Q During that period of time that this ad ran, can you tell
3 me what were the glasses that were offered for \$7.50?

4 What kind of a prescription or what kind of lenses and
5 frames were offered for \$7.50?

6 A First of all, this advertisement stated that prescriptions
7 brought in -- I believe it said: Oculists' prescriptions
8 filled." Or "Have your eyes examined by a registered
9 optometrist, moderate examining fee."

10 Now, if a person brought in a prescription, as indicated
11 here, and requested \$7.50 glasses, they would be sold \$7.50
12 glasses.

13 Q Let me come back, Mr. Ullman, to the figures and the
14 facts that we have in front of us.

15 Do I understand that, from the figures that we have and
16 the facts that you have just stated, as you have just stated
17 then, that no one came into New York Jewelry and asked for
18 \$7.50 glasses?

19 A Mr. Epstein, I do not believe --

20 MR. MC KEAN: I am going to object to the question,
21 and I had better preface it with a bit of information. Mr.
22 Epstein asked, in that demand for production of data, for
23 tabulations, and so forth, showing the number of \$7.50 eye-
24 glasses. Now, we discussed this among ourselves. I made some
25 checks at the store, and determined that it would be very diffi-

1 cult to determine the exact number of pairs sold at \$7.50. I
2 made inquiries of the store and said: "Were there very many?"
3 They said, "Not many, at all." I asked Mr. Epstein whether
4 that sort of a representation would satisfy his purposes, and
5 we agreed -- or at least, I thought we agreed -- that we repre-
6 sented to him, admitted to him, that fewer than ten pair were
7 sold in 1964, fewer than ten pair were sold in the year 1965,
8 and the ad and the program and everything had been stopped,
9 by the start of 1966; so, there were none sold in 1966, as
10 reflected on there.

11 Mr. Epstein was in possession of that information.
12 The reason we did it that way, because it was impossible to
13 spend a week and a half to find out what the exact answer
14 was.

15 HEARING EXAMINER LYNCH: Is there anything further?

16 This is redirect examination, and you have been
17 directly examining the witness over an area that you have
18 already examined him on direct examination and covering grounds
19 that you have already covered before.

20 There has been no objection, but you are going out
21 a little out in left field. I think you should curtail it.
22 You said you had a few questions. There are several areas
23 you have already covered on direct, and you are going back
24 into it on redirect.

25 By Mr. Epstein:

1 Q Mr. Ullman, I want to invite your attention to Commis-
2 sion's Exhibit 76 and ask you: In the light of your explana-
3 tion of the \$7.50 eyeglasses, if this person, Eley Freshley,
4 came into your store and requested \$7.50 eyeglasses, pursuant
5 to your advertisement, would he have qualified for \$7.50 eye-
6 glasses?

7 A That is a hypothetical question, Mr. Epstein, but there
8 were no qualifications as to what the \$7.50 eyeglasses would
9 be. This man was examined in our store, and for that reason
10 would not be qualified for the \$7.50 eyeglasses.

11 Q Then, to that extent, the \$7.50 eyeglasses would have
12 applied only to people who came in who already had a prescrip-
13 tion.

14 A That is the way the advertisement specifically stated.

15 MR. EPSTEIN: No further questions.

16 MR. MC KEAN: I have three relatively short ones.

17 HEARING EXAMINER LYNCH: Go ahead.

18 RECROSS-EXAMINATION

19 By Mr. McKeen:

20 Q What is an oculist, by the way?

21 A An oculist is the same as an ophthalmologist, just a
22 different term for a medical doctor.

23 Q Do you practice optometry?

24 A No.

25 Q Do you examine eyes?

A Never.

1 Q Do you measure eyes?

2 A Only pupillary distance, which is the distance -- a measure-
3 ment necessary for the production of glasses.

4 Q For the sizing of the frames?

5 A The size of frames.

6 Q Have you ever measured refractive error of a person's
7 eyes?

8 A Never.

9 Q Do you recommend prescriptions of glasses to anybody?

10 A No, never.

11 Q Do you or anybody in New York Jewelry tell customers that
12 used television sets are new?

13 A No.

14 Q Mr. Ullman, does New York Jewelry sell sunglasses?

15 A Yes, we do.

16 Q Do you sell plano sunglasses?

17 What does that mean?

18 A It means no correction.

19 Q This is a lens with no refractive correction?

20 A No power.

21 Q What would be the price range for such plano sunglasses?

22 A Generally, in the area of \$17 or \$17.50 or up to
23 \$22.50.

24 MR. MC KEAN: That is all, Your Honor.

25 MR. EPSTEIN: One question, Your Honor.

1 prior to coming to Washington in 1960, I had an assignment
2 similar to the previous one in New York City. I worked in
3 Brooklyn, parts of Manhattan and Long Island.

4 Q Now, during these assignments, did you have occasion to
5 come into contact with applicants, with members of credit
6 unions?

7 A Yes, part of our examination and responsibilities involved
8 reviewing the credit unions' records, with their members and
9 a good part of the examination did involve that area.

10 Q Who were these members?

11 A Well, they are people from all walks of life. Credit
12 unions are organized by a group of people having a common
13 interest. It could be people working for the same industrial
14 organization. It could be members of a fraternal organization.
15 It could be members who are participating in a community action
16 program, for example.

17 Q Could you tell us what your understanding of the term
18 "low income consumer" is?

19 A My understanding of the term "low income consumer" --

20 Let me think about that a minute, because it covers a
21 multitude of things.

22 A low-income person, to me, is a person whose income is
23 just barely sufficient to fulfill his minimal needs, and of
24 course this would be my definition of a low income consumer.
25 This person, of course, has to consume goods.

1 Q From what areas in Washington, D. C., did the participants
2 in the course come? From what areas?

3 A The majority of them came from Washington, D. C. All of
4 them from target areas or Community Action Program areas. We
5 had one or two from Richmond, and I believe we had one from
6 Norfolk, but the majority came from the D. C. area, a few
7 from Arlington and Alexandria.

8 Q Let me ask you this: Could you give me your definition of
9 the term: "Low Income Marketplace?"

10 A Well, low income marketplace is usually an area in an urban
11 center, such as Washington, D. C., where the system of merchandising,
12 in my opinion, has been designed to cater to persons
13 who make minimal income or a little above and to persons who
14 are living in low-social status.

15 Q Are you familiar with the low-income marketplaces in the
16 District of Columbia?

17 A Yes, I believe I am familiar with most of them.

18 Q Could you tell me what these places are, the ones that
19 you are familiar with?

20 MR. MC KEAN: I object to this. What is the purpose?
21 Where are we going here?

22 HEARING EXAMINER LYNCH: That is a good question.
23 Do you have an answer to that, Mr. Gross?

24 MR. GROSS: Yes, Your Honor. I am trying to qualify
25 this witness as an expert on the low-income marketplace in

1 Washington, D. C. and on the problems of low-income consumers
2 in Washington, D. C.

3 We have charged in paragraph 2 that the New York
4 Jewelry Company does business with low-income consumers.

5 HEARING EXAMINER LYNCH: Is that illegal?

6 MR. GROSS: I beg your pardon?

7 HEARING EXAMINER LYNCH: Is that illegal?

8 MR. GROSS: That in and of itself is not illegal.

9 We have also charged that the prices charged by the New York
10 Jewelry Company are unconscionable.

11 I am attempting to show why these prices are un-
12 conscionable, and one of the reasons they are unconscionable is
13 because of the class of the people that New York Jewelry does
14 business with.

15 MR. MC KEAN: If this witness does not anything to
16 tell us about the customers of New York Jewelry and cannot
17 identify them, if he does not have any specific knowledge, I
18 am going to register my objection to the entire line of
19 questioning.

20 HEARING EXAMINER LYNCH: I will note your objection.
21 Make the motion to strike at the conclusion of the testimony
22 if you like.

23 Go ahead.

24 MR. GROSS: Would the reporter read the last question
25 back?

1 (The record was read by the reporter.)

2 By Mr. Gross:

3 Q By that, I was referring to the low-income places in
4 Washington, D. C.

5 A The locations?

6 Q Yes.

7 A I would say Nichols Avenue and Anacostia, Seventh Street
8 downtown and perhaps D up to New York Avenue, and the 8th
9 and H area in Northeast, 14th and Park Road, Northwest. I
10 think that that might cover some of the areas I am speaking
11 about.

12 Q Could you describe how the low-income marketplace
13 operates?

14 MR. MC KEAN: I object to that.

15 Are we talking about New York Jewelry, or are we not?

16 HEARING EXAMINER LYNCH: The objection is sustained.

17 By Mr. Gross:

18 Q Are you familiar with the 7th Street area, between D
19 and New York Avenue?

20 A Generally, yes.

21 Q Could you describe how a store in that area operates?

22 MR. MC KEAN: Objection.

23 HEARING EXAMINER LYNCH: The objection is sustained.

24 By Mr. Gross:

25 Q Mr. Bollenghi, could you tell us who are the people that

1 trade in the low-income marketplace?

2 A They are normally people who do not qualify for credit
3 in the stores that you and I might shop in, the department
4 stores, the discount houses. From my experience, they are
5 people who have recently moved into a large urban center,
6 perhaps from the more traditional areas, or the South, or
7 some of the rural areas. They are people who suffer a rather
8 low-status in life. They are people who are usually immobile
9 economically, educationally, socially. They are usually people
10 who require some kind of personalized service or treatment in
11 their relationship with the merchants.

12 Q Mr. Bellangi, if I were to describe to you -- Excuse me.

13 Mr. Bellenghi, are you familiar with the Radio Stations WOOK
14 and WEST?

15 A Yes.

16 Q What kind of stations are those?

17 A Well, I think they are stations --

18 MR. MC KEAN: I object. I do not know what the
19 question means.

20 HEARING EXAMINER LYNCH: The objection is sustained.

21 By Mr. Cross:

22 Q Could you describe their programming?

23 HEARING EXAMINER LYNCH: Is the witness qualified as
24 a sociologist or qualified as an expert in radio broadcasting
25 advertising, or what?

1 to do with New York Jewelry. We are talking about New York
2 Jewelry, and evidence about other people's problems is not
3 relevant.

4 HEARING EXAMINER LYNCH: Mr. Gross, I do not want
5 to tell you how to present your case. You have laid a founda-
6 tion for it, as to the background and education and experience
7 with respect to what you would consider to be a low income
8 group.

9 Why don't you ask him what he knows about the
10 respondent. That is the problem you have got here. We are
11 not talking about some nebulous thing. Let's get the New York
12 Jewelry Company, that is, the respondent in this case, and
13 ask what he knows, if anything, about it. You have qualified
14 him as knowing what the general approach is to people in the
15 low-income status, strata as you call it. Ask him what he
16 knows about the respondent.

17 MR. GROSS: I have tried to qualify him as an expert,
18 so he can answer a hypothetical question based on the evidence
19 already in the record.

20 HEARING EXAMINER LYNCH: We are trying New York
21 Jewelry involving the Federal Trade Commission Act.

22 Let's stick with the complaint. That is all I am
23 trying to get at.

24 By Mr. Gross:

25 Q Are you familiar with the New York Jewelry Company

1 at 719 7th Street, Northwest?

2 A I have gone by it.

3 Q Is that store located in what you would describe as a low-
4 income marketplace?

5 MR. MC KEAN: I object.

6 HEARING EXAMINER LYNCH: I think he can answer that.

7 The objection is overruled.

8 By Mr. Gross:

9 Q Would that be your opinion?

10 A Yes.

11 HEARING EXAMINER LYNCH: Is this right across the
12 street from Lansburgh's?

13 THE WITNESS: I do not know what is on the other
14 side. I can't remember.

15 HEARING EXAMINER LYNCH: You know the area, that
16 section of 7th Street. I don't know whether it is or not.
17 I thought you knew the area. The question was asked by Mr.
18 Gross about a certain section of 7th Street.

19 THE WITNESS: I am not able to give you the particular
20 names of the stores.

21 HEARING EXAMINER LYNCH: Go ahead, Mr. Gross.

22 By Mr. Gross:

23 Q Based on your knowledge, could you describe the type of
24 store New York Jewelry Company is?

25 MR. MC KEAN: Objection. He said he had gone by it.

1 MR. GROSS: I have no further questions of the
2 witness.

3 HEARING EXAMINER LYNCH: Do you care to cross-
4 examine?

5 MR. MC KEAN: No, Your Honor.

6 HEARING EXAMINER LYNCH: You may step down, sir.

7 MR. EPSTEIN: The Commission calls Mr. Edward
8 Garretson.

9 - - -
10 EDWARD GARRETSON was thereupon called as a witness
11 for the Commission and, having first been duly sworn, testified
12 as follows:

13 DIRECT EXAMINATION

14 By Mr. Epstein:

15 Q State your name and address for the reporter, please?

16 A Edward F. Garretson, 9407 Highland Avenue, Bethesda.

17 Q Mr. Garretson, were you subpoenaed here to testify today?

18 A Yes, I was.

19 Q Do you have the subpoena with you?

20 A Yes, I do.

21 Q Mr. Garretson, will you tell us what your present
22 occupation is, please?

23 A I am the Vice President and General Manager of the Credit
24 Bureau, Inc. of Washington, D. C.

25 Q Will you tell us what the Credit Bureau, Inc. is, sir?

1 A The Credit Bureau is an organization engaged in the process
2 of gathering and recording and disseminating favorable and
3 unfavorable information pertaining to the creditworthiness,
4 financial responsibility and paying habits and character of
5 individuals who are seeking credit privileges, so that the
6 prospective credit grantor can make a sound credit judgment.

7 Q In that connection, Mr. Garretson, are such credit records
8 kept by the Credit Bureau, Inc.?

9 A Yes, they are.

10 Q Would you tell us for what people these records are kept?

11 A In this area, we have approximately two and one-half million
12 records.

13 Q That is, for people who reside in the metropolitan
14 Washington, D. C. area?

15 A That is right, the metropolitan area would include Mont-
16 gomery County, Prince Georges in Maryland, and Fairfax,
17 Arlington and the city of Alexandria in the Virginia area.

18 Q Now, Mr. Garretson, will you state, starting with your
19 undergraduate work at college, the names of the colleges and
20 the degrees you hold from them?

21 A I graduated from Rutgers University in New Jersey, with a
22 BS in Business Management. That is the only college degree I
23 have. I have attended specific courses. I graduated from an
24 industry course, a four-year summer course, held at Princeton
25 by the Northeastern Credit Bureaus, and I have a certificate

1 for that work in credit management.

2 I have attended other credit and collection schools and
3 training programs for the firms that I have worked for over
4 the years.

5 Q I am not sure -- Did you tell us when you graduated from
6 Rutgers, Mr. Garretson?

7 A Yes, I graduated in 1954. That tends to make a little
8 younger, because I went in the Navy first.

9 Q Now, Mr. Garretson, from the time that you completed
10 your college education, would you tell us, beginning with the
11 first job you held out of college, what positions you have held
12 and with what companies?

13 A At the time I graduated from college I was also working.
14 At the time of my graduation, I was collection manager with
15 Beneficial Finance Company and had been for some three years,
16 and I was an assistant loan manager and made loans and passed
17 on credit judgment.

18 Also, while going to school, I did additional credit work
19 with other small organizations. When I left there I joined the
20 Credit Bureau of Central New Jersey as collection manager, and
21 then I became general manager, and then I bought a piece of
22 the business and became a corporate officer, and when I sold
23 out and left there, I was the executive vice president of the
24 Credit Bureau of Central New Jersey.

25 I was with them for a period of about nine years, and

1 during that time I also did some consulting work with small
2 credit firms that did not have full-time credit managers of
3 their own, and then I joined the Credit Bureau in Washington,
4 D. C., four years ago, and got my present position as vice
5 president and general manager.

6 Q Then, am I correct that, in terms of your experience,
7 since graduating from college and for some period of time
8 even before then, your experience has been exclusively in the
9 area of credit and credit management?

10 A Credit and collections and management, yes.

11 Q Do you belong to any professional society or professional
12 associations that are in the credit area?

13 A Yes. I am a member of the Associated Credit Bureaus of
14 America, which is an association of more than two thousand
15 credit bureaus throughout the country and Canada and a few
16 foreign places, and, as such, I am on the Legislative
17 Commission for the National Association. I am on the Research
18 Committee for the Northern Credit Bureaus.

19 I am also treasurer of the Mutual Protective Association
20 which is -- here in Washington, D. C., it is engaged in credit
21 and store protection from the standpoint of bad checks, and
22 shoplifting, and so forth.

23 I am also the secretary of the Retail Credit Association
24 of Metropolitan Washington which is an educational organization
25 engaged in training and educating credit people from the clerk

1 level right up to the management.

2 Q Mr. Garretson, in the course of your experience in credit
3 and the positions you have held in credit, have you also done
4 any writing in the area of creditor collection?

5 A Yes, I have.

6 Q Would you describe what the writings and in what publica-
7 tions they were?

8 A Well, I have written articles and I have given speeches
9 that have been printed as articles in magazines. They were
10 not originally written as magazine articles. They were in
11 Management, which is a monthly magazine of the Associated
12 Credit Bureaus of America covering 2,000-odd credit bureaus,
13 and I also wrote for Key, which is a magazine for the Northwestern
14 credit people, and for Credit Bureau, which is a magazine for
15 the International Consumer Credit Association, in which I also
16 have a membership.

17 Q I have had articles appearing for the magazine -- I do not
18 remember the name of the Associated Credit Bureaus of Texas --
19 I can't remember them all.

20 Q Has this writing that you have just referred to, Mr.
21 Garretson, transpired over a period of years up to and including
22 the present time?

23 A Yes, for over ten years or more.

24 Q Now, have you also lectured or given talks in the area
25 of retail credit? Have you done that, Mr. Garretson?

1 By Mr. Epstein:

2 Q Mr. Garretson, I want to put before you and have you
3 examine, if you will, Commission's Exhibit 2, which is a
4 credit application for Preston William White. That was made
5 out for this gentleman for credit at the New York Jewelry
6 Company, and I would like for you to examine that, and if you
7 would, please, I would like for you to answer for me, after
8 you have examined it, whether or not, on the basis of the
9 information contained on that application for credit, you would
10 have granted credit to this individual.

11 A I do not have enough information here to make a credit
12 judgment. I would want more information. This does not
13 even show his address.

14 Q Would you tell me what information you would need, Mr.
15 Garretson?

16 A I would want to know where Preston William White was
17 living for one thing. He could live in Kalamazoo, Michigan,
18 as far as this thing is concerned. I would certainly want to
19 know his address and how long he had been living there, whether
20 he owned or rented, and I would want to know the terms; if
21 it were a mortgage, I would want to know how he was paying,
22 and if it were a rental, I would want to know how much rent
23 he was paying, and, in conjunction with that, I would want to
24 know how he was paying it, but that would come along a little
25 later, however.

1 I see that he is single; employed, Union News Company,
2 Union Station Restaurant. I would want to know what his job
3 was. He could be the manager of that restaurant, or he could
4 be a porter. That would make a difference in my credit judg-
5 ment, whether I wanted him at all; if so, how much I would
6 extend to him. It does not say how long he has worked there.
7 He may have just started or maybe 15 years. This would definite-
8 ly make a difference. I have not got enough information.

9 Q Mr. Garretson, I want to put before you Commission's
10 Exhibit 16. This is the credit application of Mary Daughtery
11 who has applied for credit at the New York Jewelry Company,
12 and I want you, after your examination, to tell me whether or
13 not you would have granted credit to this individual.

14 A Just to begin with, you said Mary Daugherty, and this
15 looks to me like it might be Moses and Mary, and I want to
16 draw this distinction. If this is husband and wife, it makes
17 a difference. That is Moses and Mary.

18 Q I think to the extent of what is stated on this card
19 it is Moses and Mary Daughtery, yes.

20 A This indicates that he has three years on his job, and
21 as to the wife's employment it says, "Not at", so I assume it
22 indicates that she was working for Country Club Cleaners but
23 was not there.

24 I would have a lot more questions I would have to raise,
25 before I could pass judgment on this. Again, this has an

1 address, but I do not know whether they own or rent or how
2 much they pay. I do not know what his income is or hers or
3 if she has any. There seems to be a conflict here, and of course
4 I do not know. There is the question I raised before, about
5 what their expenses are, in addition to their rent: do they
6 have any children; whether they pay for other obligations that
7 they might have.

8 I can't find any financial information on here. I might
9 not be able to read this too well. \$38.29. What is that?
10 Do you know what that is; is that the amount of the purchase?

11 Q I think, to the extent --

12 HEARING EXAMINER LYNCH: Just let the witness answer
13 the question.

14 THE WITNESS: I would not make a credit judgment
15 on this without more information.

16 By Mr. Epstein:

17 Q Mr. Garretson, to your knowledge and experience, is it
18 customary for credit grantors to grant credit to people whose
19 salaries have been garnisheed previously?

20 A No, it is not a standard practice.

21 HEARING EXAMINER LYNCH: You say it is not a standard
22 practice?

23 THE WITNESS: No, it is not a standard practice.

24 HEARING EXAMINER LYNCH: That is what I understood.

25 By Mr. Epstein:

1 Q I want to put before you Commission's Exhibit 18, and
2 I want you to study that, and I will ask you the same ques-
3 tions concerning the credit application of Walter Whitfield
4 who has applied for credit.

5 A May I ask you, what is the question now? Would I grant
6 him credit?

7 Q Would you grant credit on the information contained in
8 this document?

9 A No, the same thing applies here. I do not have enough
10 information for me to grant credit.

11 Q Based on your knowledge and experience in the field,
12 would there be enough information there for an ordinary credit
13 grantor to extend credit to Walter Whitfield?

14 A No, I do not think so. This does not even indicate
15 employment. And employment, unless the individual has some
16 other source of income, if he has got an annuity or something,
17 employment means of income -- I do not see any indication of
18 means of income on this application.

19 Q Now, I want to show you Commission's Exhibit 30, Mr.
20 Garretson, the application for credit of Minnie Alice Henry.
21 I want to ask you, Mr. Garretson, if you would study that please,
22 and then I will ask you, after you have studied that, whether
23 you could tell me whether or not a credit grantor would have
24 extended credit to Minnie Alice Henry.

25 A I do not know whether I can speak for a credit grantor. I

1 can tell you generally.

2 HEARING EXAMINER LYNCH: All we want is your opinion.

3 By Mr. Epstein:

4 Q Your opinion, Mr. Garretson.

5 A On the strength of this application, I would not grant
6 her credit.

7 Q What further information would you need, Mr. Garretson?

8 A In this particular case, I would not need much more
9 information, because this is a very weak application.

10 Probably, the only way that this woman is going to get credit
11 is to get somebody else's name as a co-signer. She has ten
12 months at her residence; no telephone; four months on the
13 job. She is employed as a counter-girl in a drug store, and
14 this type of employment is not very stable and statistically
15 has not proved to be the best of credit risks, in that type of
16 employment. She is single. Single girls require a little
17 bit more strength on their credit applications than others,
18 because single girls are susceptible to getting married
19 and married girls are susceptible to having babies which cuts
20 off their income.

21 On the strength of this application, I do not even know
22 that I would need much more information. I would probably turn
23 her down, on the face of the application.

24 Q When you say "turn her down", you are referring to the
25 application of Minnie Alice Henry, and the exhibit was Commis-

1 sion's Exhibit 30.

2 Now, I want to show you Commission's Exhibit 36, which
3 is the application for credit of James Edward Freeman who has
4 made application for credit, and I want to ask you if the
5 information contained in this application, on that basis,
6 whether you would grant credit to him?

7 A I think I will say "No." He is 20 years old, for one thing.
8 And he is a minor. So, I imagine, in his case, unless there are
9 certain extenuating circumstances -- I am not a lawyer, but
10 I imagine this would be a voidable contract, and I do not want
11 to be on the short end of a voidable contract. He is a stock
12 boy. His income can't be very much, and no security has been
13 established as yet. No, I would not touch it.

14 Q Now, Mr. Garretson, assuming that the application for
15 credit were complete and the information were supplied, what
16 type of verification would you pursue in order to determine
17 whether or not you would grant credit after the applications
18 were made?

19 MR. MC KEAN: I object to the whole line of questions
20 again on the grounds of relevancy.

21 MR. EPSTEIN: As a matter of fact, I think it is
22 highly relevant, because Mr. Ullom, when he was on the stand,
23 explained the extent of verification up to and including --

24 HEARING EXAMINER LYNCH: The witness has already said
25 what he would require by way of background the three C's, as he

1 described them very carefully. He went into that very care-
2 fully. I do not know why you are repeating them.

3 MR. EPSTEIN: Perhaps, I did not state the question
4 clearly. Once the application was complete, Mr. Garretson
5 advised that there were steps that you take to verify the
6 information contained on the application, and my question
7 in this case to Mr. Garretson:

8 By Mr. Epstein:

9 Q How do you verify?

10 In other words, what are the physical steps for the purpose
11 of a credit check? Let me use that language.

12 HEARING EXAMINER LYNCH: Go ahead and answer the
13 question.

14 THE WITNESS: In my opinion, the first thing that
15 should be done is to call the Credit Bureau and see what kind
16 of information you get.

17 HEARING EXAMINER LYNCH: You would not be making a
18 point for the Credit Bureau?

19 THE WITNESS: Yes, I would.

20 HEARING EXAMINER LYNCH: Go ahead.

21 THE WITNESS: Aside from that, it is good sound
22 credit practice.

23 HEARING EXAMINER LYNCH: I was joking.

24 THE WITNESS: So was I, but the basic reason for this
25 is that the applicants do not always answer the questions the

1 way the creditor wants them answered. He puts his best foot
2 forward. He would not necessarily tell you about having an account
3 at places where he is delinquent or has been sued.

4 HEARING EXAMINER LYNCH: What do you do next, after
5 calling the Credit Bureau? What do you do next?

6 THE WITNESS: Either have them or myself -- speaking
7 as a retail credit grantor -- verify the basic points that he
8 put in the application, for example, does he work where he says
9 he does? How much is he is making? Does he live where he
10 says he is living? I would attempt to verify the various
11 answers to the questions that I asked him to fill out for me,
12 and, then, of course, I would want to check his paying record
13 at the credit references that he gave. If he said he had an
14 account at Woodward and Lothrop or the Hecht Company or Riggs
15 National Bank, I would want to check with them and find if that
16 is so and what his paying experience was with them.

17 Q When you talk about verification, is this verification
18 done in writing or orally?

19 A Both.

20 Q If it is done in writing, are there forms that are used
21 for this specific type of verification?

22 A Yes, there usually are; it could be a regular letter
23 that is sent through, but usually sent is a form.

24 Q I want to put before you Commission's Exhibit 46, which
25 is the credit application of Johnnie Johnson who is applying for

1 credit, and I want to ask: Can you tell me, in your opinion,
2 would you have granted Mr. Johnson credit?

3 A I will have to say, again, not without more information.
4 Wait a minute. It might depend on the extent of credit that
5 he was asking for, but as to whether I would want to investi-
6 gate further or just say "No" right off the bat, this is not a
7 strong application, and I probably would not reject him without
8 more information, but it is not a strong application -- renting
9 at \$10 a week, no phone; apparently single. I do not see where
10 he is married. I do not know the date of this application,
11 but if it were taken today he would be just 21. If it were
12 taken at anytime prior to March 10, he would have been under
13 21.

14 HEARING EXAMINER LYNCH: You have answered the ques-
15 tion.

16 By Mr. Epstein:

17 Q I want to direct your attention to Exhibit 41, Commis-
18 sion's Exhibit 41, and ask you to review this. This is the
19 application for credit of Synithia Gray.

20 MR. MC KEAN: I renew my objection on grounds of
21 relevancy, and it is cumulative.

22 HEARING EXAMINER LYNCH: It is getting accumulative.
23 How many more are you going to do?

24 MR. EPSTEIN: I will withdraw the question.

25 HEARING EXAMINER LYNCH: All right. Thank you.

1 ledge because these license applications to the FCC may be
2 within the province of the FCC.

3 This Yearbook, which contains the information as to
4 the broadcasts being directed 100 per cent to the Negroes, is a
5 more public document, a document to which the public in general
6 may have a better access than they would to the information
7 that the FCC would also have, and I say to Your Honor that
8 this also would be the situation, that this same information,
9 as to the market to which stations WOOK and WUST are directed,
10 is to the Negro market.

11 HEARING EXAMINER LYNCH: Mr. McKean?

12 MR. MC KEAN: If Mr. Epstein is asking you to take
13 judicial notice of the application filed with the Federal
14 Communications Commission, I would not want anybody to rely
15 on his statement of their content. I have never seen them. I
16 do not know what is in them.

17 HEARING EXAMINER LYNCH: I do not, either.

18 MR. MC KEAN: That is all I have on that.

19 MR. EPSTEIN: I have something further, if I may take
20 one more minute.

21 Earlier this week, I filed with respondent's counsel
22 a request for admission, but I am now going to ask Your Honor
23 to take official notice that the public records of the Court of
24 General Sessions of the District of Columbia contain the informa-
25 tion that in the calendar year 1964, New York Jeweiry Company

1 filed in the Court of General Sessions 1,178 suits for judgment
2 on monies due and owing to New York Jewelry Company and that,
3 further, this total is reflected in the books and records, the
4 public documents of the Court of General Sessions; that 885
5 of these suits for judgment were filed in the Small Claims
6 Branch of the District of Columbia Court of General Sessions,
7 and 293 of those suits for judgment were filed in the General
8 Sessions.

9 In calendar 1965, the books and records of the Court
10 of General Sessions indicate that New York Jewelry Company
11 filed 1,631 suits for judgment on monies due and owing and,
12 further, the public records of the docket book of the Small
13 Claims Branch will show that 1,379 of those suits for judgment
14 were filed in the Small Claims Branch, and 252 were filed
15 in General Sessions.

16 Further, that in calendar 1966, New York Jewelry
17 Company filed 707 suits for judgment in the Court of General
18 Sessions of the District of Columbia, and that of the total
19 books and records of the public docket of the Small Claims
20 Branch there is disclosure that 532 were in the Small Claims
21 Branch.

22 HEARING EXAMINER LYNCH: 532?

23 MR. EPSTEIN: 535, Your Honor -- excuse me. And that
24 172 of those suits for judgment were in General Sessions.

25 I would further wish Your Honor to take official

1 notice that the maximum amount which suit can be brought for
2 in the Small Claims Branch of the District of Columbia Court
3 of General Sessions is the sum of \$150.

4 MR. MC KEAN: Your Honor, this is sort of thing which
5 Mr. Epstein may properly ask you to take judicial notice
6 of, court records and so forth. I will not object on that
7 ground.

8 I am simply registering my objection to its relevancy.

9 I submit the material is not relevant.

10 If Your Honor believes it is and rules that it is,
11 I am not objecting to your taking judicial notice of these
12 particular figures.

13 HEARING EXAMINER LYNCH: You have not any question --
14 Were these compiled by you, these figures you are referring to?

15 MR. EPSTEIN: The figures were not compiled by me.

16 I should say for the record they were compiled by Mr.
17 Gross and myself.

18 MR. MC KEAN: I am not raising an objection as to the
19 accuracy of the figures. I am not positive they are accurate.
20 It is not particularly important.

21 HEARING EXAMINER LYNCH: I will accept your offer for
22 whatever it is worth.

23 MR. EPSTEIN: Now, further, Your Honor, I will ask
24 if counsel for the respondent is willing to stipulate with me
25 the number of garnishments that were filed by New York Jewelry

1 Company in the period from January 1, 1966 to February 28,
2 1967, and, further, I wish the record to show that counsel
3 supporting the complaint and respondent's counsel have previous-
4 ly discussed this matter and that, in connection with the
5 question of the number of garnishments that have been filed by
6 New York Jewelry Company, I would state that we have also dis-
7 cussed the number of garnishments that have been filed by other
8 companies in the Court of General Sessions of the District of
9 Columbia, and, to that extent, I will make the offer, as counsel
10 supporting the complaint I will make the offer, to stipulate
11 with counsel for respondent and, to the extent that we stipulate,
12 on the basis that we include the other companies that we have
13 discussed, I will so include those companies in the stipulation.

14 MR. MC KEAN: That sounds agreeable to me, Your Honor.

15 HEARING EXAMINER LYNCH: All right.

16 MR. EPSTEIN: I would stipulate between counsel
17 supporting the complaint and respondent's counsel that in the
18 period from January 1, 1966 to February 28, 1967, the New York
19 Jewelry Company had 411 --

20 MR. MC KEAN: Let me correct the statement. The
21 information refers to the number of garnishments filed. That
22 was the only data that was available to us. The New York
23 Jewelry Company had filed 411 garnishments. The C. and P.
24 Telephone filed 91. The Hecht Company filed 217. Kay Jewelry
25 Stores filed 202, and Reliable Stores Corporation filed 305.

1 MR. EPSTEIN: May we also include in the stipulation,
2 for purposes of clarification, that Reliable Stores, a Corpora-
3 tion, as part of their operations includes a store commonly known
4 as The Hub, or has traded under the name of The Hub in the
5 District of Columbia.

6 MR. MC KEAN: It also includes a store which trades
7 under the name of Kent Jewelers.

8 HEARING EXAMINER LYNCH: Reliable Stores?

9 MR. MC KEAN: It is a corporation that owns several
10 stores -- in fact, a number of stores.

11 HEARING EXAMINER LYNCH: One of which is The Hub?

12 MR. MC KEAN: That is right.

13 MR. EPSTEIN: And another is Kent Jewelry.

14 MR. MC KEAN: That is right.

15 MR. EPSTEIN: We have one more stipulation, Your Honor.
16 (Discussion was had outside the record.)

17 MR. MC KEAN: Miss Reporter, I am going to read to you
18 a stipulation and it is about two or three paragraphs long, and,
19 in order to make it somewhat easier for you, I am going to
20 give you a copy of the stipulation. I want to caution you that
21 this is just for your convenience in checking your notes, that
22 there have been some changes made and I have blocked out on this
23 thing those changes, and I will give you a part that has been
24 excised, and what I read will go in the record.

25 In case I did not record my agreement, I will add

1 this to what Mr. Epstein gave a moment ago as to the number of
2 garnishments.

3 HEARING EXAMINER LYNCH: I think the record shows that.

4 MR. MC KEAN (Reading): "It is hereby stipulated
5 by and between counsel supporting the complaint and counsel for
6 the respondent, for the purposes of the hearing in the Matter
7 of Leon A. Tashoff, individually, trading as New York Jewelry
8 Company, Docket 6714 only, that if Wendell P. Witten, OD, were
9 called by counsel supporting the complaint as a witness in
10 support of the complaint, that he would testify as follows:

11 "My name is Wendell P. Witten. I am a Doctor of
12 Optometry, and my office is located at 2001 Benning Road,
13 Northeast, Washington, D. C.

14 "I am a licensed optometrist and licensed to practice
15 in the District of Columbia. I graduated from Bluefield
16 State College and later attended and graduated from the
17 Chicago College of Optometry in 1951. The Chicago College
18 of Optometry is now called the Illinois College of Optome-
19 try. I am a member of the District of Columbia Board
20 of Optometry.

21 "On February 23, 1966, I was on duty at the Optometric
22 Center Clinic, located at 421 Fourth Street, Northwest. I
23 was approached by Jerry S. Byrd, Esquire, managing attorney,
24 Office No. 7, Neighborhood Legal Service Project, and
25 requested ^{by} Mr. Byrd to examine a pair of eyeglasses which

1 I was advised belonged to one James Freeman. I examined
2 and evaluated a pair of black plastic-frame eyeglasses
3 which I identify as Commission's Exhibit No. 40, with
4 the inscription "Frame Japan" on the right temple. Upon
5 examining the frames and lenses, including a determination
6 of the prescription correction of the lenses, it is my
7 opinion that I would have charged a patient of mine \$25
8 for the same optical service, using similar materials.

9 "This estimated charge does not include my charge
10 for an eye examination which would have been \$15 addi-
11 tional."

12 MR. EPSTEIN: It is so stipulated.

13 HEARING EXAMINER LYNCH: Thank you, gentlemen.

14 MR. EPSTEIN: Now, Your Honor, I have one further
15 point that I wish to have clarified.

16 I understand that we have been over this, but in my
17 notes, I believe that the record is not clear as to one further
18 point. I wish to establish the gross profits for the calendar
19 year 1965 for the respondent, New York Jewelry Company, to
20 the extent -- and I understand Your Honor's ruling clearly --
21 to the extent that that figure in question is stated on the
22 rejected exhibit in question -- I do not remember whose number,
23 but I think we are --

24 HEARING EXAMINER LYNCH: 51.

25 MR. EPSTEIN: I understand we have excluded the basis

1 of fact, a purchase price of \$295.

2 Commission's Exhibit 13 is a stipulation of the testi-
3 mony of Myer Fiengold, who was a retail jeweler in the city of
4 Washington, and he gave some testimony about an appraisal, it
5 being worth \$71.50, and there is a stipulation, Commission's
6 Exhibit 12, from Lawrence Codraro, an official of Bulova Watch
7 Company, who states that he has examined Exhibit 26, and he
8 identifies the case number, and so forth, in some detail.

9 He testifies that the retail fair trade price on the
10 watch is \$71.50.

11 When Commission's counsel were beginning to discuss
12 stipulations, and so forth, and trying to smooth the flow of
13 the trial, they asked me if I would admit the authenticity of
14 the physical exhibits?

15 I said, "Certainly," and they did make the physical
16 exhibits available for examination by New York Jewelry people
17 at my office about three weeks ago, and after the examination I
18 told them that I was willing to admit the authenticity of the
19 things that they had shown me, except for the watch.

20 That was because Mr. Ullman told me he was not certain
21 that the watch had come from New York Jewelry, and that will
22 come out later.

23 I told him to go ahead and find out what he could
24 about it, and it boiled down to talking to Roland Taylor. I
25 am sure Mr. Gross is willing to agree that Roland Taylor is not

1 absolutely clear that I am completely taken by surprise and
2 am shocked by the developments, and I do not question the
3 fact that Mr. McKean will bring out tomorrow, as he indicated
4 this morning, certain facts, but as to the stipulation and as
5 to the position that these facts now put counsel supporting the
6 complaint in, I want to make it clear that we dealt in good
7 faith.

8 HEARING EXAMINER LYNCH: I am satisfied with that.

9 MR. MC KEAN: I am also satisfied that Commission's
10 counsel have dealt in good faith.

11 HEARING EXAMINER LYNCH: I am sure you are, and I
12 think in your discussion, your comments concerning the situa-
13 tion that was arrived at, that your comments were made in that
14 vein, that you were not making any accusations with respect to
15 any improper conduct on the part of counsel, and that you were
16 in no way indicating otherwise. I am sure that you did not
17 intend that, and I am satisfied that Mr. Epstein and Mr. Gross,
18 neither of them, would ever have entered into any stipulation
19 that would be contrary to what the facts are, as they thought
20 them to be at the time they entered into the agreement.

21 MR. EPSTEIN: I appreciate Your Honor's comment and
22 thank you, sir. To the extent now that we come to the issue
23 of the facts as they truly exist and as respondent's counsel
24 has indicated they may be in the case of this wrist watch
25 of Roland Taylor --

DIRECT EXAMINATION

1
2 MR. MC KEAN: There is a stipulation of direct testi-
3 mony of Synithia Gray Washington, in which Miss Washington
4 states that after being given an examination by the doctor on
5 the premises of New York Jewelry, that he, the doctor, began to
6 take credit information from her.

7 By Mr. McKean:

8 Q Does the optometrist take credit information?

9 A Never.

10 Q Does he take any sort of information other than optometric
11 information?

12 A None, whatever.

13 Q Is there anybody at New York Jewelry who wears a white
14 coat other than a registered optometrist?

15 A No.

16 Q Has anybody ever worn a white coat other than an
17 optometrist?

18 A Not a professional coat; maybe a sport coat; never a pro-
19 fessional coat.

20 Q I am talking about a white doctor's jacket.

21 A No, sir, never.

22 Q Mr. Ullman, I am going to show what has been marked for
23 identification as Commission's Exhibit 26. This is a watch,
24 identified in the stipulated testimony of Roland Taylor, and
25

1 I am going to ask you if you have seen this watch before.

2 A I have, Mr. McKean.

3 Q Where did you see it?

4 A I saw it in your office.

5 Q Approximately when?

6 A Probably two weeks ago.

7 Q At that time were you asked if you could authenticate the
8 watch as coming from New York Jewelry?

9 A Yes.

10 Q Did you examine the watch at that time?

11 A I did, very carefully.

12 Q Did you examine the interior of the watch?

13 A I did.

14 Q Did I ask you if you could authenticate the watch as coming
15 from New York Jewelry?

16 A You did.

17 Q What was your answer to me?

18 A I told you I could not.

19 Q On what did you base that answer?

20 A I said -- I opened the watch, and inside the watch, it
21 seemed to be particularly dirty, dirtier than it should have
22 been had it been bought in December of 1965. The back of the
23 case at the corners is worn away to a point where there are
24 holes, or very nearly holes, through the case. Such wear is
25 not usual with a watch purchased only a year or so before.

17 G St., N. W., Washington 1, D. C.

WARD & PAUL

1 This takes much time before a case wears that way.

2 Q Mr. Ullman, can you give me some idea of the number of
3 new accounts opened at New York Jewelry last year?

4 A It would run in the neighborhood of 2900.

5 Q Can you tell me how many accounts which had been opened
6 previous to the start of last year there were, on which sales
7 were made last year?

8 A I would say in the area of --

9 MR. EPSTEIN: May I interject, before the witness
10 answers, an objection?

11 I do not understand the question.

12 MR. MC KEAN: I would be happy to rephrase it.

13 HEARING EXAMINER LYNCH: Rephrase the question.

14 By Mr. McKean:

15 Q I first asked you about accounts which opened last year.
16 Now, I am directing your attention to accounts which had been
17 opened prior to January 1, 1956, accounts which were opened
18 earlier.

19 On how many of such accounts was merchandise sold last
20 year?

21 A In the neighborhood of 2200, I would say.

22 Q Mr. Ullman, when you extend credit, do you make any
23 attempt to check on the employment of the person to whom you
24 are extending credit?

25 A We do.

Q What items do you check?

1 from the pawnbroker.

2 MR. MC KEAN: That is why I have called Mr. Taylor.

3 Mr. Ullman can't identify this.

4 HEARING EXAMINER LYNCH: He can't identify this docu-
5 ment. Does the document have any numbers on it concerning the
6 proposed exhibit, 26?

7 MR. MC KEAN: Oh, yes, Your Honor.

8 HEARING EXAMINER LYNCH: Is Mr. Ullman familiar with
9 the number on proposed 26?

10 MR. MC KEAN: No more familiar than you or I.

11 HEARING EXAMINER LYNCH: I understood from his testi-
12 mony he examined the watch while it was in your custody.

13 MR. MC KEAN: All right, Your Honor.

14 HEARING EXAMINER LYNCH: And in his examination of
15 this watch he got familiar with it.

16 I asked the question the other day: Does the watch
17 have any number or anything on it?

18 MR. MC KEAN: It does.

19 May I have Exhibit 26?

20 By Mr. McKean:

21 Q First of all, Mr. Ullman, I am going to direct your atten-
22 tion to what has been marked for identification as Commission's
23 Exhibit 26. Does that watch have a number on it?

24 A It does.

25 Q What is the number?

1 A The case number is the C-547739.

2 Q When you examined that watch in my office two or three
3 weeks ago, did the watch you examined have that same case
4 number on it?

5 A Yes, it did.

6 Q I refer you to what has been marked for identification as
7 Respondent's Exhibit 39-C, with particular attention No. 371.

8 First of all, would you look at that and would you tell me
9 what the item is?

10 A Item 371 is described as a watch, men's, W. G., wrist.

11 Q What does W. G. wrist mean?

12 A In the trade, that indicates white gold 17-jewel Bulova.
13 Under column "Watch Movement," the number is 8BBA. Under
14 "Watch Case Number," C-547739. Further description, "Self
15 winding ST.; case, ST. ST stretch band."

16 Q Mr. Ullman, is that watch, Commission's Exhibit 26, for
17 identification, the watch described under item 371?

18 Is this the watch described under item 371 on Respondent's
19 Exhibit 39-C?

20 MR. EPSTEIN: Objection, Your Honor. This calls for
21 a conclusion of the witness that I do not think he is competent
22 to testify to.

23 HEARING EXAMINER LYNCH: The objection is overruled.

24 Answer the question.

25

1 THE WITNESS: It would be. The case number corres-
2 ponds.

3 By Mr. McKean:

4 Q Does the description correspond in other respects?

5 A It does.

6 Q Does it correspond entirely?

7 A It does.

8 MR. EPSTEIN: At this point, if I may, with Your
9 Honor's indulgence, to save a substantial amount of time here
10 and pursuing an avenue that I am not sure is going to give
11 us any further illumination, I am willing to withdraw the
12 watch in question, which is Commission's Exhibit 26 for identi-
13 fication, and I am further willing to stipulate with
14 Respondent's counsel that the watch as identified as Commission's
15 Exhibit 26 is not the watch that was or, in fact, is not the
16 watch that is covered under the conditional sales contract
17 that Roland Taylor signed for a watch for \$295 with New York
18 Jewelry Company.

19 MR. MC KEAN: I am sure Mr. Epstein would be happy to
20 withdraw the watch, but I do not think that I am going to be
21 able to agree to the withdrawal of the watch.

22 As a matter of fact, when Mr. Taylor gets here, after
23 his testimony, I am going to request your permission to offer
24 the watch in evidence. I think it should accompany the 307
25 permanent record, and since it is to the respondent's interest

1 A Yes, sir.

2 MR. EPSTEIN: Let the record show that the witness is
3 holding in his hand a duplicate or a carbon copy of the condi-
4 tional sales contract of which a photocopy is in evidence.

5 By MR. EPSTEIN:

6 Q This is your copy of the contract, then, Mr. Taylor?

7 A That is right.

8 Q Now, Mr. Taylor, on this contract of December 23, 1955,
9 there is contained there a new man's Bulova watch for \$295.

10 Did you, in fact, buy a watch on that date for the price
11 of \$295?

12 A Yes, sir, I did.

13 Q Am I correct, Mr. Taylor, did you agreed to purchase the
14 watch on time, that you would make payments for the watch?

15 A Yes.

16 Q And also that the conditional sales contract includes
17 other items; so that we can establish exactly what the trans-
18 actions included, what was the new heater, Mr. Taylor?

19 A One of these little blower heaters like, you know, a
20 small heater.

21 Q And also it says that you bought a new lighter for \$24.75.
22 Would you tell us what the lighter was?

23 A A little Ronson lighter. I think I have it at the house
24 now.

25 Q Ronson? R-o-n-s-o-n?

1 A That is right, yes.

2 Q A table lighter or a pocket light?

3 A A little pocket lighter.

4 Q Now, Mr. Taylor, at the time that you signed this contract
5 at the New York Jewelry Company -- This is your signature,
6 you told us?

7 A That is right.

8 Q Was all the information on this contract filled in at the
9 time that you signed your name to it?

10 A Yes, sir, it was.

11 Q And you knew at the time that your total purchase was
12 \$352.50 for these three items.

13 MR. MC KEAN: I do not want to make technical objec-
14 tions, but this is beyond the scope of direct. He has a stipu-
15 lation.

16 HEARING EXAMINER LYNCH: It is beyond the scope of
17 direct examination, but you have a stipulation that if this
18 man had been called, he could testify thus and so, and Mr.
19 Epstein is querying him with respect to the stipulation.

20 I am following very closely, and the matters he men-
21 tioned are mentioned in the stipulation. The witness has answered
22 the question. If you have another question, ask it please.

23 By Mr. Epstein:

24 Q Now, Mr. Taylor, what did you do?

25 You bought this man's Bulova watch on December 23, 1955.

1 Now, would you tell us after December 23, 1965, what did you
2 do?

3 Did you take the watch out of the store?

4 A Yes, I did.

5 Q Were you wearing the watch?

6 A I was wearing it, yes.

7 Q For how long a period of time did you wear the watch?

8 A I wore it for quite a while. I had a little bad luck.

9 Q Now, you fell into bad luck?

10 Would you tell us when this was?

11 Do you remember exactly?

12 Do you have any idea in your mind?

13 Go ahead and take your time and think about when it may
14 have happened.

15 A I think it was -- I am sure this was around -- it
16 was about March of '65.

17 Q Now, Mr. Taylor, about that watch that you bought at the
18 New York Jewelry Company, do you remember what the watch
19 looked like?

20 A Something just like that.

21 Q Before we go back to that, can you describe it to me
22 without looking at the watch?

23 Can we tell me what the watch looked like?

24 A I sure can, if I see it.

25 Q If you did not see it, could you describe it for me?

G St. N. W., Washington, D. C.

200

1 A Yes.

2 Q Would you describe it first without looking at the watch?

3 Tell me what it looked like.

4 A Made something like that, almost just like it, to tell you
5 the truth.

6 MR. EPSTEIN: With your Honor's indulgence -- and Mr.
7 McKean's --

8 By Mr. Epstein:

9 Q Do you remember what color the watch was?

10 A Same color.

11 Q What color was that, Mr. Taylor?

12 A What you call silver color, or like that.

13 Q Do you remember the brand name of the watch?

14 Do you remember what kind it was?

15 A A self-winding Bulova.

16 Q Now, at the time you made this purchase at the New York
17 Jewelry Company, I want to come back to when you were looking
18 at the watches in the store.

19 Did you look at several watches?

20 Did you look at more than one watch?

21 A A couple of watches.

22 Q Do you remember who waited on you?

23 Do you remember the salesman who waited on you?

24 Do you remember what he looked like?

25 A One of the colored fellows that worked there.

1 Q One of the colored men that worked there?

2 A Yes.

3 Q Had you been in New York Jewelry Company before the date of
4 this purchase?

5 A Yes, I had.

6 Q So, the fellow that waited on you had seen you before?

7 A Yes.

8 Q And you knew who he was?

9 A Yes.

10 Q Did he show you several watches at the time?

11 A No, he said he wanted to give me the best one he had in
12 there; so, there were a couple of them. One I did not like;
13 so, he brought me another one.

14 Q When he told you that he wanted to give you the best watch
15 he had, was this the watch he brought out to you, this Bulova
16 self-winding watch?

17 A Yes.

18 Q What did he tell you about the watch?

19 A He said it was guaranteed, at that time, guaranteed.

20 Q What kind of a guarantee did he tell you it had?

21 Describe the guarantee.

22 MR. MC KEAM: I object to that as beyond the scope --

23 HEARING EXAMINER IMICH: You have gone too far, I

24 think.

25 MR. EPSTEIN: Let me back up.

1 By Mr. Epstein:

2 Q Did the watch have a price tag on it, Mr. Taylor? The
3 watch that you bought for \$295, did it have a price tag on it?

4 A He taken it off when he gave it to me.

5 Q They took the price off, the price tag off?

6 A Yes, it was on.

7 Q Did you see the price on the watch?

8 A I didn't look at the price. I saw the tag when he took
9 it off.

10 Q And then he put the watch right on your wrist?

11 A That is right.

12 Q Now, I want to come back, Mr. Taylor, and I want to put
13 in front of you what is Commission's Exhibit 26 for identifica-
14 tion, and I want you to answer, looking now at the watch:

15 Does this look like the watch that you bought from New
16 York Jewelry Company?

17 A It looks like it.

18 Q Now, Mr. Taylor, you explained to Mr. McKean that the watch
19 was pawned, and I just want to cover this with you, and you
20 just go ahead and explain it to me, however you want, in your
21 own words.

22 In about March, you fell on hard luck.

23 A Yes.

24 Q And you needed some money.

25 A Yes.

1 Q What did you do with the watch?

2 A I took it down and pawned it.

3 Q I gather then that, in order to raise the cash, you took
4 it to Feinstein's Pawnshop?

5 A That is right.

6 Q Now, what happened?

7 You got to the pawnshop.

8 A They wouldn't allow me more than \$10 on it.

9 Q \$10?

10 A Wasn't worth no more than \$10.

11 Q Did you explain what you paid for it?

12 A What I paid for it, yes.

13 Q Did he say anything to you?

14 A He did.

15 Q What did he say?

16 A He said: "What kind of a price did you pay for the watch?"

17 I said: "Couldn't I get more than \$10?" And he said: "No,

18 that is all it is worth."

19 Q When he gave you the \$10, did he give you a ticket for the
20 watch?

21 Did he give you a pawn ticket?

22 A That is right.

23 Q What happened to the pawn ticket?

24 A If I know I had to come down, I would have --

25 Q You still have the pawn ticket?

1 A Still have the pawn ticket.

2 Q Now, Mr. Taylor, there came a time if I am not mistaken,
3 when you were visited by Mr. Gross -- sitting right over here
4 at counsel table -- and he asked you some questions about this
5 watch.

6 A Yes.

7 Q Now, at that time, had you already pawned the watch, Mr.
8 Taylor?

9 A It was already pawned.

10 Q So, when Mr. Gross asked you about the watch, covered by
11 this conditional sales contract, it wasn't in your possession.

12 A That is right.

13 Q Then, what happened, Mr. Taylor? What did you do?
14 Did you tell your wife to go down and get the watch?

15 A Yes, I did.

16 Q Did your wife know that there was a pawn ticket for it?

17 A She knew it very well.

18 Q And it was at your instructions then that you told your
19 wife to go down and take the watch out of hock?

20 A That is right.

21 Q Then, am I correct, as you informed Mr. McKean, that your
22 wife got the watch?

23 A That is right.

24 MR. MC KEAN: I object to that.

25 HEARING EXAMINER LYNCH: The objection is sustained.

1 A Sir, I tell you, something familiar with like that --

2 Q I want you to forget about this exhibit at the moment. I
3 want to ask you: You bought this watch as covered by this con-
4 tract. Now, I want to ask you: You have described to us that
5 you did pawn the watch.

6 My question is: Did the watch you pawned at Weinstein
7 Pawnbrokers -- Are you positive that that is the watch that
8 you did buy from New York Jewelry Company for \$295?

9 A That is correct.

10 Q Now, you are absolutely positive in your mind that was
11 the watch you bought from New York Jewelry?

12 A That is right.

13 Q As a matter of fact, it is that watch that the pawnbroker
14 allowed you \$10 for.

15 A Yes.

16 Q He gave you \$10 on it the day you pawned it.

17 A That is right.

18 MR. EPSTEIN: No further questions, Your Honor.

19 HEARING EXAMINER LYNCH: Mr. McKean?

20 MR. MC KEAN: Well, Your Honor, I am going to object
21 to certain questions asked by Mr. Epstein and certain answers
22 and I am going to ask that they be stricken upon the grounds
23 (1) that they are beyond the scope of direct and (2) that they
24 are not competent evidence and that they are hearsay.

25 Mr. Taylor made certain statements about things said

1 to him by the pawnbroker, and I think it is a truism -- as
2 certainly I am sure everybody in this room knows, that pawn-
3 brokers buy just as cheaply as they possibly can, nor is there
4 ever much truth in their appraisals.

5 I am going to ask that all testimony relating to
6 conversations with pawnbrokers be stricken.

7 HEARING EXAMINER LYNCH: The motion is denied. I will
8 consider the weight of the remarks that they made, in the context
9 in which they were made.

10 REDIRECT EXAMINATION

11 By Mr. McKean:

12 Q My watch -- this is what is called yellow gold.

13 A Yes.

14 Q And this watch here is what is called white gold.

15 HEARING EXAMINER LYNCH: Let the record show the
16 Exhibit Number --

17 MR. MC KEAN: Commission's Exhibit 26.

18 By Mr. McKean:

19 Q Was the watch you bought at New York Jewelry yellow gold
20 or white gold?

21 A White gold like this.

22 Q Incidentally, Mr. Taylor, can you tell the difference between
23 the color of these two watches, my watch and the watch identified
24 as --

25 A Yes, I can.

1 Q Now, you told Mr. Epstein that your wife knew the watch
2 that you bought from New York Jewelry, was familiar with it.

3 A That is right.

4 Q And you pawned it and sent her down to pick it up.

5 A That is right.

6 Q Did she bring back the watch that you had pawned?

7 A Well, I do not know. To tell the truth, they looked so
8 much alike, I could not tell you, tell them apart.

9 Q Didn't you tell me that your wife brought back a different
10 watch than the watch you pawned with Mr. Weinstein, that that
11 had been sold by him?

12 MR. EPSTEIN: May I register an objection as to the
13 fact that the witness just testified as to exactly what his
14 recollection was.

15 HEARING EXAMINER LYNCH: The objection is overruled.
16 You brought it up, Mr. Epstein. Go ahead. Can you answer the
17 question?

18 By Mr. McKean:

19 Q Didn't you tell me the watch you had pawned had been sold
20 by Mr. Weinstein and your wife brought back a different watch
21 and told you she bought another watch?

22 A Yes, she did.

23 MR. MC KEAN: Thank you, Mr. Taylor.

24 That is all I have.

25 MR. EPSTEIN: No further questions.

1 HEARING EXAMINER LYNCH: Thank you very much, Mr.
2 Taylor. You may step down.

3 MR. MC KEAN: Mr. Taylor, thank you for coming.
4 I ask that Mr. Ullman be recalled.

5 EUGENE ULLMAN was recalled as a witness for the
6 Respondent and testified further as follows:

7 DIRECT EXAMINATION -- resumed

8 By Mr. McKean:

9 Q Let me show you Respondent's Exhibit 71.

10 A Yes.

11 Q Can you identify that?

12 A Yes.

13 Q What is it?

14 A A cash sales ticket.

15 Q What transaction does it reflect?

16 A It reflects the sale of a transistor radio, \$2.88, 9 cents
17 tax, total \$2.97.

18 Q Can you identify the merchandise?

19 A This is a Master Tone 6-transistor radio.

20 Q Will you look at Respondent's Exhibit 72 for identifica-
21 tion. Can you identify that?

22 A Yes.

23 Q What is it?

24 A A cash sales ticket.

25 Q What transaction does it reflect?

1 A It reflects the sale of one 10-transistor.

2 Q Can you identify the merchandise?

3 A It would be a Master Tone 10-transistor radio.

4 Q Can you identify certain items of information imprinted
5 on that exhibit by the cash register?

6 Q Is that correct?

7 A Yes.

8 Q And would those same items of information be imprinted on
9 the cash register tape for that same date?

10 A They would.

11 Q Let me show you Respondent's Exhibits 72 and 73 for identi-
12 fication.

13 A Yes.

14 Q Can you identify that?

15 A It is a cash sale ticket.

16 Q What transaction does it refer to?

17 A It refers to the sale of a transistor, \$1, and three cents
18 tax.

19 Q Can you identify the merchandise?

20 A This would be a transistor radio, probably one in a
21 damaged condition. One of the Master Tones that was shopworn
22 or something.

23 Q What was the date of this transaction?

24 A This was February 20, 1967.

25 Q Can you identify the merchandise as a Master Tone?

A I can. Look at Respondent's Exhibit 74?

1 A Yes.

2 Q Can you identify that?

3 A It is a cash sales ticket.

4 Q Would you describe the transaction that refers to?

5 A It refers to the sale one radio, \$4.88, 15 cents tax,
6 total \$5.03.

7 Q Can you identify the merchandise in that transaction?

8 A It would be a Master Tone transistor radio.

9 Q Can you tell me whether the information centered on that
10 slip by the cash register would appear on the cash register
11 tape for that date?

12 A It would not.

13 Q How do you know?

14 A There are two impressions on that ticket, indicating that
15 the ticket only came out of the cash register part way.

16 MR. MC KEAN: Your Honor, would you care to view it?

17 By Mr. McKean:

18 Q Mr. Ullman, do you recall a sale of Master Tone transistor
19 radios on July 21 to Congressional Distributors?

20 A I do.

21 Q Can you tell me how many radios were sold?

22 MR. EPSTEIN: I object. I do not think that a proper
23 foundation has been laid as to how this witness knows of the
24 transactions, how they were sold.

25 MR. MC KEAN: I asked him if he recalled the sale, and

1 he said he did recall it.

2 HEARING EXAMINER LYNCH: The sale to whom?

3 MR. MC KEAN: Congressional Distributors.

4 HEARING EXAMINER LYNCH: Do you recall the sale?

5 THE WITNESS: Yes, I do.

6 HEARING EXAMINER LYNCH: Go ahead.

7 By Mr. McKean:

8 Q Let me show you Respondent's Exhibit 64 for identifica-
9 tion. Can you identify that?

10 A I can.

11 Q What is it?

12 A This is our invoice to Congressional Distributors.

13 Q What transaction does it reflect?

14 A It shows the sale of sixteen 8-transistor radios, and fifteen
15 10-transistor radios.

16 Q What is the date on that?

17 A The date is July 21, 1966.

18 Q Now, did there come a time when there was a burglary at New
19 York Jewelry?

20 A There did.

21 Q Do you remember the date; do you remember the exact date?

22 A No, I do not remember the exact date.

23 Q Can you give me an approximate date?

24 A November, 1966, if I am not mistaken.

25 Q What was taken, if you recall?

1 A A number of items.

2 Q What sort of items?

3 A Television sets, record players, some watches, some transistor
4 radios.

5 Q Were any small transistor radios taken?

6 A Yes.

7 Q How many?

8 A Three

9 Q What kind of radios were they, what brand?

10 A Master Tone transistors.

11 Q Where were they in the store at the time of the burglary?

12 A They were in one of the wall cases up in the front of the
13 store.

14 Q How many were there?

15 A Three.

16 Q Were there any more than that there?

17 A Not in that case.

18 Q Where were the rest of them?

19 A The rest of them were in the back of the store.

20 Q Are there any Master Tone radios in stock at New York

21 Jewelry?

22 A There are.

23 Q How many, Mr. Ullman?

24 A Two.

25

MR. MC KEAN: I would like to have marked for identi-

1 fication as Respondent's Exhibits 83 a box containing a
2 transistor radio, and it is marked Master Tone 10-transistor radio,
3 Model H-1061, and the box contains a Master Tone radio.

4 (The article was marked as Respondent's Exhibit 83
5 for identification.)

6 MR. MC KEAN: And the other one will be 84.

7 HEARING EXAMINER LYNCH: Likewise a Master Tone?

8 MR. MC KEAN: Yes.

9 (The article referred to was marked as Respondent's
10 Exhibit 84, for identification.)

11 By Mr. McKean:

12 Q Mr. Ullman, are Respondent's Exhibits 83 and 84 the two
13 transistor radios remaining in stock?

14 A They are.

15 Q You testified that on or about July 8, you, in company
16 with Mr. Epstein -- First, let me ask you, what did you see
17 on July 8, on or about July 8, and I am making reference to the
18 Master Tone radios and the tags on them?

19 A I saw a tag on a Master Tone radio for \$59.50.

20 Q Do you recall how many radios there were with such tags?

21 A There were seven at that time. The sale was over.

22 Q What was supposed to be the regular price of those radios
23 at that time?

24 A \$5.95.

25 Q Do you have any explanation, do you know why there was a

1 \$59.50 tag on those radios?

2 A I do not know why.

3 Q Do you have an opinion or explanation?

4 A My only opinion or explanation would be that the party who
5 tagged them misunderstood my directions, misplaced a decimal
6 point.

7 Q And again --

8 MR. EPSTEIN: May I have a motion to strike the
9 answer of the witness?

10 I think that he answered that he did not know how it
11 came about, and this is pure conjecture.

12 MR. MC KEAN: This is not pure conjecture. It is
13 informed conjecture.

14 HEARING EXAMINER LYNCH: The objection is over-
15 ruled. You can cross-examine, Mr. Epstein. You can go into
16 this on cross-examination

17 By Mr. McKean:

18 Q Once again, were any Master Tone transistor radios ever
19 sold at \$59.50?

20 A No.

21 MR. MC KEAN: I am, I think, at the end of this.

22 Let me consult my notes.

23 I want to offer Respondent's Exhibits --

24 (Discussion was had outside the record.)

25 MR. MC KEAN: May I offer Respondent's Exhibit 40, 41,

1 A \$2.88, 9, a line, and \$2.37.

2 Exhibit 63, radio, 8.00, a line, 24, and another line.

3 Q There is also additional writing that says on the bank --

4 A That is not my writing.

5 Q Do you know when this writing was put on, Mr. Ullman?

6 A Which writing are you referring to?

7 Q The writing on the back?

8 A No, I do not.

9 Q Do you recognize the handwriting?

10 A No, I do not.

11 Q Exhibit 67.

12 A 67 bears my handwriting, 9/7/66, radio \$3.95, 12, a line,
13 and \$4.07.

14 Q About these documents, you explained -- and I want to know
15 how the cash register -- how these slips would explain -- Are
16 these slips kept in the regular course of business?

17 A They are.

18 Q These slips are various sizes, shapes, colors, and differ-
19 ential material. Is that the usual type of sales slip that you
20 have in your business, that there is no uniformity in those sales
21 slips?

22 A This is the record kept for the daily business, the sales
23 slips that go through the register. This is printer's scrap
24 that we buy at a reasonable price for recording purposes.

25 Q So, there is no uniformity to this.

1 A Not necessarily so.

2 Q You could have different appearing slips for the same day.

3 A That is correct.

4 Q Now, also as to the dates that appear on here that you
5 discussed with Mr. Kean, I want to understand the cash register
6 slips, the slips that have a date, but the cash register tape
7 does not have a date Is that right?

8 A That is right.

9 MR. EPSTEIN: Well, Your Honor, I object to the
10 introduction of all of the exhibits in general as an improper
11 foundation having been laid to the transaction. The witness
12 identified that only a small portion of these documents
13 bear his handwriting for which he would have knowledge of what
14 they are.

15 Second, I object on the ground that there is no
16 verification that the date obtained on these was obtained in
17 the ordinary course of their business transactions.

18 He indicated that the cash register does not bear
19 the date, but the cash slip can. On that point, let me ask
20 one question to clarify what I am driving at.

21 By Epstein:

22 Q How is the date imprinted on these cash slips, Mr. Ullman?

23 A It is imprinted automatically, as the transaction is rung.

24 Q How do you set the date, in order to show it? Is it
25 set manually?

1 A At the close of each day's business, the date is set
2 manually for the next day's business.

3 Q And each day, someone in the store sets the date so it
4 will appear on the cash register?

5 A Someone does.

6 Q Is there a cash slip for every single transaction that
7 occurred in the course of a day in New York Jewelry?

8 A There is.

9 Q Including both credit and cash purchases?

10 A Yes.

11 MR. EPSTEIN: The witness indicated that the majority
12 of these documents are not in his handwriting. We say this is
13 not proper foundation.

14 HEARING EXAMINER LYNCH: The objection is overruled.
15 They may be received. Proceed.

16 (The documents referred to, heretofore marked as
17 Respondent's Exhibits 40; 41; 42; 43 through 74, and
18 82 were received in evidence.)

19 MR. MC KEAN: I would also like to note that we made
20 an offer of the cash register tapes. I told Commission's
21 counsel that they would be available in my office all last
22 week for him to examine.

23 HEARING EXAMINER LYNCH: Thank you.

24 Proceed.

25 MR. EPSTEIN: May we recess for lunch and then come

1 Bulova Engineer Craftsman watch sold for, that is reflected on
2 that invoice?

3 MR. MC KEAN: He asked that question once on his
4 direct.

5 This is beyond the scope of direct for this witness.

6 MR. EPSTEIN: No, it is not. I think that this
7 witness's memory as to prices at which certain merchandise was
8 sold in his store is definitely an issue on this point.

9 HEARING EXAMINER LYNCH: I recall your asking that
10 question, Mr. Epstein, but I will let you ask it again, and
11 then I am going to tell you what I just got through telling
12 you. I have let you make your point. Answer the question.

13 THE WITNESS: No, I cannot.

14 MR. EPSTEIN: I have no further questions.

15 REDIRECT EXAMINATION

16 By Mr. McKean:

17 Q Mr. Ullman, did I make the request of you that you should
18 trace through the records and find an account of every Master
19 Tone invoice -- every Master Tone transistor radio?

20 A Yes.

21 MR. EPSTEIN: Objection.

22 HEARING EXAMINER LYNCH: The objection is overruled.

23 By Mr. McKean:

24 Q How much time did you spend doing that?

25 A Much time.

1 Q Mr. Ullman, referring to respondent's Exhibits 43, 44,
2 and other cash slips, Mr. Epstein has pointed out that they are
3 on different types of paper, and so forth. Could you tell us
4 where this paper is obtained by New York Jewelry?

5 A From our printer, scrap as a rule, trimmings from jobs
6 that he does.

7 Q Do you buy it from him?

8 A Yes, we do.

9 Q Do you use it regularly?

10 A Yes.

11 Q Do you use cash slips regularly?

12 A Regularly.

13 Q Are cash slips kept in the regular course of business?

14 A Yes.

15 Q Do you have a printed cash slip form or printed cash slip
16 booklet?

17 A That form.

18 Q The back of the rectangular slip of scrap paper?

19 A Correct.

20 Q Are all cash slips in the store on such rectangular slips
21 of scrap paper?

22 A Yes.

23 Q Now, Mr. Ullman, during the period from the time when the
24 Biddle transistor radios arrived -- the Master Tone transistor
25 radios arrived, as reflected in Commission's Exhibit 122, the

1 Biddle invoice -- from that time to the present, have you had
2 any small transistor radios in stock -- and I will define "small"
3 for the purposes of this question as small transistor radios,
4 approximately hand or pocket size.

5 A No.

6 MR. EPSTEIN: I did not hear the question.

7 (The record was read by the reporter.)

8 By Mr. McKean:

9 Q During that entire time period, did you have any other
10 radios in stock that would have sold for the prices reflected
11 on those cash slips?

12 A No.

13 Q Is that the reason you can identify the cash slips,
14 referring to the sales of Master Tone radios?

15 A Yes.

16 Q Positively?

17 A Positively.

18 MR. MC KEAN: That is all, Your Honor.

19 MR. EPSTEIN: May I ask one or two questions on
20 redirect?

21 RECROSS EXAMINATION

22 By Mr. Epstein:

23 Q Mr. Ullman, who sets the retail prices?

24 Who establishes the retail prices of the merchandise that
25 you have on display in your store?

1 MR. MC KEAN: I object to this as beyond the scope of
2 redirect.

3 HEARING EXAMINER LYNCH: I think it is. The objection
4 is sound, but I think the witness has been sufficiently estab-
5 lished by way of background, his own statement of his duties,
6 functions, and responsibilities as manager of the store that
7 he can answer the question, and I think it would help the
8 question.

9 THE WITNESS: I do.

10 By Mr. Epstein:

11 Q Well, you told us that, as to the Biddle invoice and the
12 advertisement that appears in the Washington Daily News, am
13 I correct, this was a sales promotion item for these radios?

14 HEARING EXAMINER LYNCH: Let the record show that
15 the witness nodded his head "yes".

16 By Mr. Epstein:

17 Q And that we are talking about Respondent's Exhibits 42
18 and Commission's Exhibit 122.

19 Mr. Ullman, how do you set this price? How do you
20 establish the price at which the goods are sold?

21 MR. MC KEAN: I will renew my objection.

22 HEARING EXAMINER LYNCH: The objection is sustained.

23 MR. EPSTEIN: I have no further questions.

24 MR. MC KEAN: No questions.

25 HEARING EXAMINER LYNCH: Thank you very much, Mr.

1 Ullman. Call your next witness.

2 MR. MC KEAN: I would like to call Mr. Joseph Tashoff.

3 - - -

4 JOSEPH TASHOFF was thereupon called as a witness for
5 the Respondent and, having been first duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. McKean:

9 Q Would you give the reporter your full name and your
10 residence address?

11 A Joseph Tashoff, 6411 Kirby Road, Bethesda.

12 Q What line of business are you in, Mr. Tashoff?

13 A I am in the wholesale business.

14 Q What sort of items, and so forth -- What sort of items
15 do you deal in, what kind of merchandise?

16 A Generally, inexpensive radios, watches, costume jewelry,
17 ballpoint pens, pen sets, and umbrellas.

18 Q What kind or class of customers do you sell these items
19 to?

20 A To premium users, supermarkets and other retailers.

21 Q What do the premium users do with them?

22 A They use them either as sales stimulants or as premiums in
23 their business. For instance, the Evening Star buys from us.
24 They use the items to give the carrier boys if they increase
25 circulation.

1 We sell to milk firms, that if the driver brings in three
2 or four new customers, he gets a premium. Things of that type.

3 Q Under what name do you do business?

4 A Congressional Distributors and Tash Industries.

5 Q What is the distinction between them?

6 A We use Tash Industries as the selling end and Congressional
7 Distributors as the buying end.

8 Q Who is the owner of your business?

9 A My wife and I are the sole owners.

10 Q You are the sole owners?

11 A Yes, sir.

12 Q Does anyone else have an interest in your business?

13 A No, sir.

14 Q What, if any, is your connection with the New York Jewelry
15 Company?

16 A There is no connection between my company and the New York
17 Jewelry other than the owner of New York Jewelry is my father.
18 That is where the connection stops.

19 Q Are you an employee of New York Jewelry?

20 A No, I am not.

21 Q Are you a manager of New York Jewelry?

22 A No.

23 Q Does the Respondent in this case, your father here, Leon

24 A. Tashoff, own an interest in your business?

25 A None whatsoever.

1 Q Is the operator or manager of that business an employee
2 of yours?

3 A No.

4 Q Do you buy from or sell to New York Jewelry?

5 A Very seldom, but on some occasions, yes.

6 Q Do you sell anything at retail?

7 A No.

8 Q Do you sell at wholesale only?

9 A That is correct.

10 Q Let me show you Respondent's Exhibit 64. Can you identify
11 that?

12 A Yes. That is an invoice for some radios that we purchased
13 from the New York Jewelry.

14 Q What is the date of it?

15 A July 21, 1966.

16 Q What did you do with the radios that you bought from New
17 York Jewelry?

18 A We sold them.

19 Q Let me refer you to Respondent's Exhibit 75 for identifica-
20 tion, 75 and 77, 78 and 79. I will take them one by one.

21 Respondent's Exhibit 75, can you identify that?

22 A Yes. This is an invoice that we sold the Piggly Wiggly
23 Corporation several items.

24 Q Are transistor radios included in that?

25 A Yes, there were some transistor radios.

1 Q Look at Respondent's Exhibit 76. Can you identify that?

2 A Yes, that is an invoice for several items including
3 transistor radios, sold to University Nursing Home.

4 Q Look at Respondent's 77. Can you identify that?

5 A That is for a transistor radio.

6 Q How about Respondent's 78. Can you identify that?

7 A That is another invoice to University Nursing Home,
8 including some transistor radios.

9 Q Respondent's 79. Can you identify that?

10 A Yes, that is an invoice for transistor radios to Shambeau's
11 Foodland Supermarket.

12 Q When you say "an invoice", who is it an invoice from, from
13 your company?

14 A From Tash Industries to our customer.

15 Q Now, would you refer back to Respondent's 75.

16 That is the invoice to Piggly Wiggly. Is that correct?

17 A Yes, sir.

18 Q Are they a customer of yours?

19 A Yes.

20 Q A regular customer?

21 A Yes, they are.

22 Q Would you explain the transaction with regard to the
23 transistor radios there?

24 A So far as the transistor radios are concerned, this includes
25 an order for 24 of them. I remember that when we started filling

1 the order we did not have enough to fill this order, so I went
2 downstairs and purchased enough to fill this order. At that
3 time, I knew that we had --

4 Q Are you referring to Respondent's Exhibit 79, the invoice
5 to Shambeau's Food?

6 A That was a few days later.

7 Q Please explain the connection with that.

8 A This was for 15 transistor radios that we also did not have
9 in stock, so I decided to get enough to fill these two orders,
10 and that is how this invoice comes about. We decided to buy
11 approximately \$100 worth of transistor radios.

12 Q When you said "This invoice" just a moment ago, you were
13 referring to Respondent's Exhibit 64?

14 A Yes, sir.

15 Q Referring back to Respondent's Exhibit 75 again, can you
16 tell me if any of the transistor radios reflected on that
17 invoice were Master Tone resistor radios?

18 A Yes, sir, I remember very well. We were out of them. We
19 needed six more, and the ones I bought from downstairs were
20 Master Tones.

21 Q Had you had Master Tone radios in your stock prior to that?

22 A No.

23 Q Then, will you refer to Respondent's Exhibit 79, and would
24 you tell me what that transaction was there?

25 A That is for 15 transistor radios.

White
24/67
14

WARD & PAUL

977 O St., N. W., Washington 1, D. C.

1 Q Who were they sold to?

2 A Shambau's Foodland.

3 Q Were they a regular customer?

4 A Yes, sir.

5 Q Would you look at Respondent's Exhibit 76? Does that
6 reflect the sale of transistor radios?

7 A Yes, four transistor radios.

8 Q Can you identify the customer?

9 A University Nursing Home.

10 Q A regular customer?

11 A Yes.

12 Q Can you identify the transistor radios as Master Tones?

13 A Yes, I can. We were actually out of transistor radios
14 in July, around July 20 or 21, we were out of transistor radios.
15 We did not buy any more until about November, so the only
16 ones that I had in stock were the ones I purchased from New York
17 Jewelry.

18 Q Referring to Respondent's Exhibit 75, that is the invoice
19 to Piggly Wiggly Corporation, what did Piggly Wiggly want them
20 for?

21 A These were shipped to their convention. They used them
22 as premiums to give the people that attended the convention,
23 price premiums, whatever you want to call them.

24 Q Is Piggly Wiggly a good customer of yours?

25 A Yes.

1 Q Mr. Tashoff, did there come a time when there was a burglary
2 at New York Jewelry Company?

3 A Yes.

4 Q Do you recall the date of it?

5 MR. EPSTEIN: Objection. This witness has already
6 identified himself as having absolutely no connection with
7 New York Jewelry Company. How can he discuss a burglary at
8 New York Jewelry?

9 MR. MC KEAN: There is an answer that the witness can
10 give.

11 MR. EPSTEIN: There is no foundation.

12 MR. MC KEAN: I asked whether he recalls the date of
13 the burglary.

14 MR. EPSTEIN: I think that my position is clear that
15 this witness has been clearly identified as having absolutely no
16 connection with New York Jewelry Company.

17 HEARING EXAMINER LYNCH: Rephrase your question, will
18 you please?

19 By Mr. McKean:

20 Q Do you recall a burglary at New York Jewelry Company?

21 A Yes, I do.

22 Q Do you recall the date of that burglary?

23 A October 30.

24 Q Did you make a report of that burglary to the police
25 department?

A Yes, I did.

1 Q Did you make the report of that burglary to the insurance
2 company?

3 A Yes, I did.

4 Q Would you explain why you made the report to the insurance
5 company and to the police department?

6 A Fifteen years ago, I did work for New York Jewelry. A
7 part of my duties then was placing insurance, and I am rather
8 familiar with the insurance. When this burglary occurred --
9 after all, it is my father, I do not work for him, but he is
10 my father. If there is a burglary, and he is in trouble, I am
11 going to help my father. I was there, and I had the background
12 in insurance, and, as a favor to my father I called the
13 insurance company to take a little of the burden off of his
14 shoulders. I handled the claim, which is a rather simple thing
15 to handle.

16 Q Were three small transistor radios included in that
17 claim?

18 A Yes, they were.

19 Q Were three small transistor radios reported to the police
20 as stolen?

21 A Yes, sir.

22 MR. EPSTEIN: I object. These questions are leading.
23 Can't he just ask the questions and not lead the witness?

24 HEARING EXAMINER LYNCH: Would you kindly do that, Mr.

25 McKean?

1 MR. MC KEAN: Yes, Your Honor.

2 By Mr. McKean:

3 Q Would you tell me what was stolen?

4 A Some watches, televisions, and three small transistor
5 radios.

6 Q Were these three small transistor radios included in your
7 report to the police department?

8 A Yes.

9 Q And to the insurance company?

10 A Yes, they were.

11 MR. MC KEAN: That is all, Your Honor.

12 HEARING EXAMINER LYNCH: Mr. Epstein?

13 MR. MC KEAN: Before I turn him over for cross-examina-
14 tion, I would like to offer in evidence Respondent's Exhibits
15 75, 76, 77, 78 and 79.

16 The other exhibit that I have been discussing, Respond-
17 ent's Exhibit 64 has already been offered and received, I believe.

18 HEARING EXAMINER LYNCH: Is there any objection?

19 MR. EPSTEIN: Are those just the invoices that you
20 are referring to? I do not remember which ones you received
21 this morning.

22 HEARING EXAMINER LYNCH: All invoices, Mr. Epstein.

23 MR. EPSTEIN: No objection.

24 HEARING EXAMINER LYNCH: They may be received.

25 (Respondent's Exhibits 75, 76, 77, 78, and 79 were
received in evidence.)

1 that this rebuttal testimony will be put on today.

2 May we have a 15-minute recess?

3 HEARING EXAMINER LYNCH: Do you have a witness?

4 MR. EPSTEIN: We do, Your Honor.

5 (Short recess.)

6 HEARING EXAMINER LYNCH: Come to order, please.

7 MR. GROSS: We have one witness to call, as a witness
8 on rebuttal. I will call Mr. Howard Epstein.

9 - - - -

10 HOWARD EPSTEIN thereupon was called as a witness for
11 and on behalf of the Commission and, having first been duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Gross;

15 Q Will you state your name and address?

16 A Howard S. Epstein, 8409 Farrel1 Drive, Chevy Chase, Maryland.

17 Q What is your occupation?

18 A I am an attorney.

19 Q For whom do you work?

20 A I am with the Federal Trade Commission, Washington, D. C.

21 Q Mr. Epstein, do you recall an occasion on July 8, 1966 --
22 July 6, 1966, when you had occasion to visit New York Jewelry
23 Company?

24 A I do.

25 Q Would you state how that occasion came about?

1 A In the company of Walter Cross, attorney for the Federal
2 Trade Commission, I went to New York Jewelry Company for the
3 purpose of obtaining information from the company as to their
4 business practices and information and documentation relative
5 thereto.

6 Q What happened on July 6, Mr. Epstein, when you visited
7 New York Jewelry Company?

8 A On that date, we entered the premises of New York Jewelry
9 Company on 7th Street, Northwest, and we identified ourselves
10 to a woman by showing our credentials as attorneys of the
11 Federal Trade Commission and requested that we be taken to the
12 owner or the manager of the premises for the purpose of discussing
13 certain facts with him.

14 After some time we were directed to an individual who
15 identified himself to us as Leon A. Tashoff, and further identified
16 himself as the sole proprietor of the store in question.

17 Q What happened as a result of your conversations with Mr.
18 Tashoff?

19 A I again identified myself and Mr. Cross identified himself
20 to Mr. Tashoff as attorneys for the United States Government
21 specifically the Federal Trade Commission, and that we were on the
22 premises of New York Jewelry Company for the purpose of conducting
23 an investigation to obtain certain information and facts relevant
24 to the business practices of New York Jewelry Company.

25 We were advised by Mr. Tashoff that before -- I might also

1 insert here that on that date Mr. Tashoff's son, Joseph Tashoff,
2 was also there, and I was advised that Mr. Tashoff had an attorney
3 that he had dealt with for many years and that, before making any
4 further discussions with us in response to the purpose of our
5 visit, that he would wish to consult with his attorney to
6 determine the course of action which he should take in response
7 to our request for information.

8 Q What happened then, Mr. Epstein?

9 A We were told that the attorney would call us, would contact
10 us at a date mutually satisfactory, a satisfactory date would
11 be established, when we could return to the premises of New York
12 Jewelry Company and would discuss the situation at further
13 length.

14 Q What was the name of the attorney?

15 A The name of the attorney is Irving Yokelson, who is a
16 partner in a law firm in the District of Columbia.

17 Q Subsequent to that visit on July 6, were you contacted by
18 Mr. Yokelson?

19 A I was contacted by a member of Mr. Yokelson's firm, and
20 I was advised at that time that the information that we sought
21 could be obtained from Mr. Tashoff at their convenience which
22 was, at that time, set for a date of July 8, 1966.

23 Q Did you return to the store on July 8, 1966?

24 A I returned to the store in the company of Mr. Walter Gross,
25 Esquire, also an attorney at the Federal Trade Commission.

1 Q Can you give us a brief explanation of what took place
2 after you entered the store?

3 A At the outset, we were directed to Mr. Eugene Ullman by
4 Mr. Tashoff, and we were advised that Mr. Ullman was the
5 General Manager of the store, was responsible for the day-to-day
6 operations and would be able to give us the information as to the
7 operations of the store and that, as a matter of fact, Mr. Tashoff
8 at that time was physically incapacitated and would prefer that
9 we talk to Mr. Ullman, although he was there on the premises of
10 the store on that date.

11 Q Did you, in fact, have a conversation with Mr. Ullman?

12 A We did.

13 MR. MC KEAN: I am going to object to this line of
14 questioning, the appearance of the witness, and the entire
15 rebuttal, so-called, testimony. I have never heard of a
16 Commission's attorney, a prosecutor in a particular cause of
17 action, counsel supporting the complaint, and so forth, going
18 on the stand to testify as to conversations, with a view of
19 putting on such testimony. I can't recall the evidence in the
20 record as proof of fact.

21 HEARING EXAMINER LYNCH: It is a rather unusual situa-
22 tion.

23 MR. EPSTEIN: I agree with you. It is rather unusual.

24 HEARING EXAMINER LYNCH: I want to know how far are you
25 going to go. I am concerned about how far you are going to go
before I stop you. What are you trying to do?

1 tion?

2 (The record was read by the reporter.)

3 By Mr. Gross:

4 Q During your conversations with Mr. Ullman, did there come
5 a time when you requested information concerning the suppliers
6 to New York Jewelry Company?

7 A There did.

8 Q How did this come up?

9 A I told Mr. Ullman that we would like to review the invoices
10 and documents, indicating purchases made by New York Jewelry for
11 the purpose of establishing the source of supply of merchandise
12 for New York Jewelry and the types of merchandise which were
13 purchased by New York Jewelry.

14 Q What was Mr. Ullman's response?

15 A We were led to the office of New York Jewelry Company, an
16 office in which there was a metal file cabinet wherein the
17 invoices we were told were kept for the suppliers of merchandise
18 to New York Jewelry.

19 Q Who was present?

20 A At that point, we were in this office. I was in the
21 presence of Mr. Gross. I was also in the presence of Mr. Leon
22 Tachoff and Mr. Eugene Ullman, and the four of us were sitting
23 in the office approximately arranged in a semi-circle in front
24 of the metal file cabinet containing the invoices to which I was
25 requesting access for the purpose of reviewing same.

Q Did you, in fact, view the invoices, Mr. Epstein?

1 A I did, after permission was granted. I started, in, in the
2 invoices and noted that the invoices were kept in alphabetical
3 order, and I proceeded to go through in a rather hurried fashion
4 the invoices under each lettered jacket, for the purpose of
5 ascertaining the various different types of merchandise that
6 were supplied to New York Jewelry Company.

7 Q Mr. Epstein, I now show you Commission's Exhibits 57, 58,
8 and 59, and ask you if you recognize them?

9 A I do.

10 Q How do you recognize them?

11 A I recognize these as invoices which I removed from the files
12 of the invoices held by New York Jewelry Company, in the presence
13 of Mr. Gross, Mr. Ullman and Mr. Tashoff, and the further recogni-
14 tion is that these are photocopies which contain a numerical
15 identification which was placed thereon by people at the Federal
16 Trade Commission, which were in my files, in my possession, up
17 until the time of the complaint in this action.

18 Q By "numerical identification", do you mean the number that
19 appears in the lower right-hand corner?

20 A I do.

21 Q Why did you pull these particular invoices, Mr. Epstein?

22 MR. MC KEAN: I object.

23 HEARING EXAMINER LYNCH: The objection is sustained.

24 Get to the meat of the question.

25 What do you want to ask about?

1 By Mr. Gross:

2 Q Were certain representations made to you about about the
3 content of these invoices?

4 A Yes, there were.

5 Q Were certain representations made to you about the signifi-
6 cance of the handwritten notations appearing beside each item
7 on the invoices?

8 A There were.

9 Q What were those representations?

10 A The representations made to me were that the handwritten
11 notations appearing on Commission's Exhibits 59, 58, and 57
12 were the retail prices at which this merchandise was sold by
13 New York Jewelry Company.

14 Q Who made those representations?

15 A Mr. Ullman made those representations to me, and I will
16 add --

17 HEARING EXAMINER LYNCH: Never mind. Answer the ques-
18 tion.

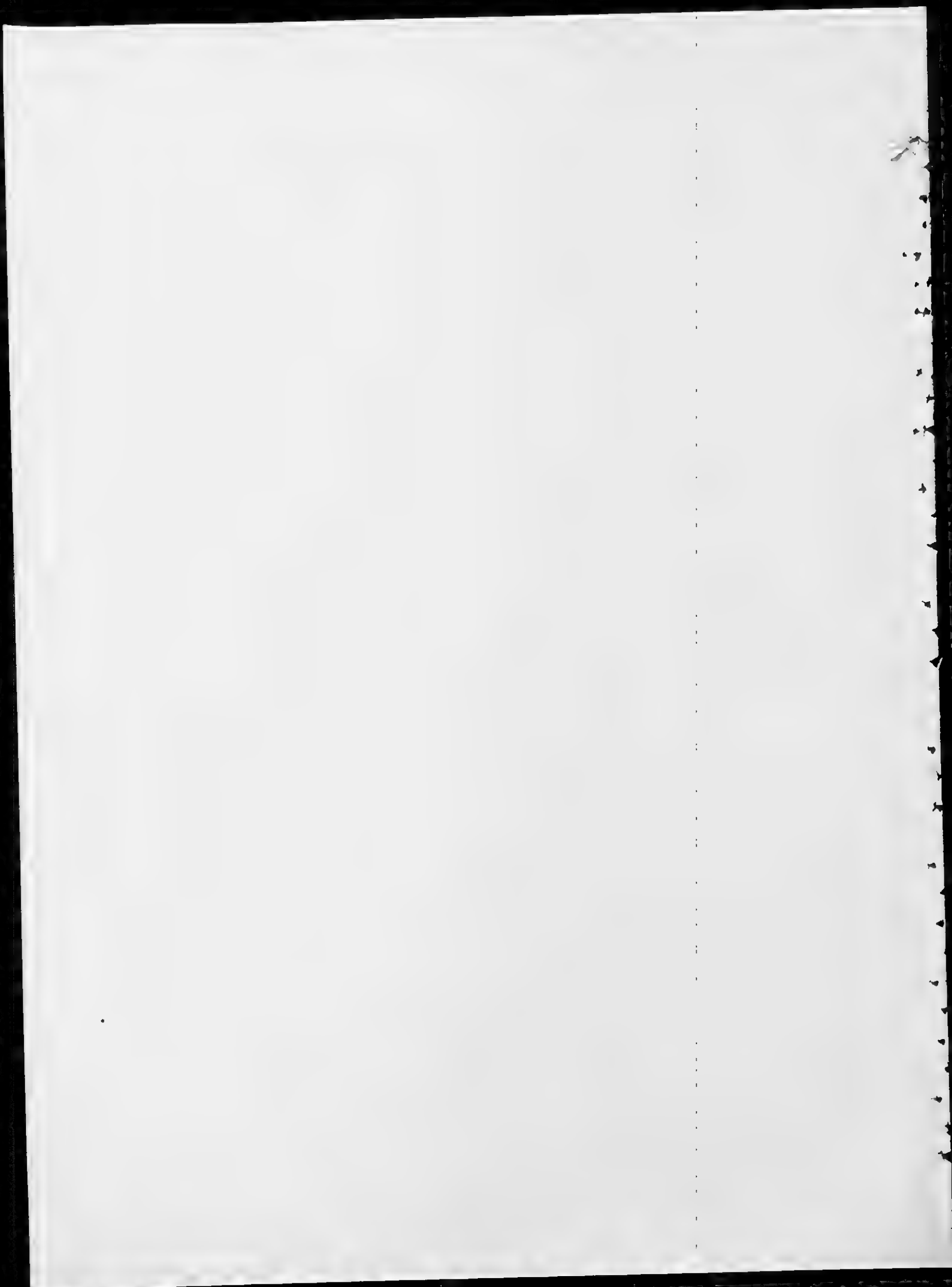
19 By Mr. Gross:

20 Q Now, Mr. Epstein, I want to ask you: During the course
21 of your visit to New York Jewelry Company, if you had occasion
22 to view certain items of merchandise on display in the store?

23 A I did.

24 Q Did you have occasion to view transistor radios?

25 A I did.



UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22702

LEON A. TASHOF

Petitioner

v.

FEDERAL TRADE COMMISSION

Respondent

Petition For Review of an Order of the
Federal Trade Commission

BRIEF FOR PETITIONER

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United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 18 1969

Nathan J. Paulson
CLERK

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*Cases principally relied upon.

STATEMENT OF QUESTIONS PRESENTED

1. Whether or not there is substantial evidence to support the issuance by the Federal Trade Commission of the entire Order which is the subject of this petition for review.

2. Whether or not there is substantial evidence to support the issuance by the Federal Trade Commission of Paragraph (1) of the Order which is the subject of this petition.

3. This matter proceeded to hearing before the Hearing Examiner on the theory, as alleged specifically in the complaint, that petitioner had disparaged the quality of, or discouraged the purchase of \$7.50 eyeglasses. Despite the failure to prove this specific allegation of the complaint, may the Commission be allowed to surmise the existence of these alleged facts without any direct evidence of the truth of these charges, in the presence of a sworn denial of the allegations.

4. When the Commission speculates on the effect or meaning of the paucity of sales at the low \$7.50 price, can the Commission's surmises be sustained in the absence of any direct evidence to support the allegations of the complaint and in the face of a sworn denial that there existed any disparagement or discouraging of the purchase of such eyeglasses.

5. Whether or not the Federal Trade Commission has consistently applied the law as reflected in its own prior determinations in similar matters, in reaching the conclusion that petitioner was guilty of engaging in "bait and switch" tactics.

THIS CASE HAS NOT PREVIOUSLY BEEN
BEFORE THE U. S. COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

6. Whether or not there is substantial evidence to support the issuance by the Federal Trade Commission of Paragraph (2) of the Order which is the subject of this petition.

7. Whether that portion of Paragraph (2) of the Order containing the language:

"...unless respondent shall have conducted, within twelve months before making any such representation, a statistically significant survey of principal retail establishments in the same trade area, which survey establishes that a substantial number of such outlets sell the same or similar merchandise at prices substantially above the prices represented by respondent to be discount, and unless respondent shall retain all documents relating to the manner in which such survey was conducted and the results thereof for at least twenty-four months after making any such representation."

is unfair, unlawful and unenforceable (1) because it improperly shifts to petitioner the burden of proving that petitioner has not violated the terms of the said Paragraph (2) of the Order, while elementary principles of jurisprudence require that the proponent of the truth of a proposition carry the burden of proving it, especially when violation of an order of the Federal Trade Commission is subject to such severe criminal penalties, (2) because this portion of the order would impose an excessive burden upon petitioner, and (3) because it is vague and does not inform petitioner with sufficient precision and accuracy of what conduct is prohibited or allowed.

8. Whether or not there is substantial evidence to support the issuance by the Federal Trade Commission of Paragraphs (4), (5) and (6) of the Order which is the subject of this petition.

9. Whether or not the Commission has exceeded its statutory authority relating to the requiring of affirmative disclosure of credit information and terms, in a case where no misrepresentation of such terms was charged or proved, in requiring, by the issuance of Paragraphs (4), (5) and (6) of the

Order, any act, action or disclosure by petitioner which is not required by Title I of the Consumer Credit Protection Act; Public Law 90-321, enacted May 29, 1968, which is commonly known as the "Truth-in-Lending" Act.

10. Whether or not the Federal Trade Commission has consistently applied the law, as reflected in its own prior determinations in similar matters, in reaching the conclusion that petitioner had violated the Federal Trade Commission Act in merely failing to make affirmative disclosure of credit terms in detail similar to that now required by the "Truth-in-Lending" Act.

11. Whether or not the requirement imposed by Paragraph (6) of the Order to disclose orally certain information to a prospective buyer is unenforceable (1) because it is unduly and unfairly burdensome, (2) because of the difficulties of effective compliance therewith, (3) because the necessity for such a requirement is not supported by substantial evidence, and (4) because the requirement exceeds the requirements of the "Truth-in-Lending" Act.

12. Whether or not there is substantial evidence to support the issuance by the Federal Trade Commission of Paragraph (3) of the Order which is the subject of this petition.

13. Whether or not there was substantial evidence to support the charge of the complaint that petitioner was guilty of charging prices that were "unconscionably high" in that they "greatly exceeded" prices charged by other sellers of the same merchandise.

14. Whether or not the complaint is so vague and confusing as to make it impossible for petitioner to know what violation or violations of the Federal Trade Commission Act are alleged therein.

15. Whether or not the complaint should be dismissed as too vague and imprecise to sufficiently inform petitioner of the violations of law being alleged therein when a principal allegation of the complaint upon which the case proceeded

to hearings (namely the charge that petitioner's prices were "unconscionably high" in that they greatly exceed the prices charged by others for similar merchandise) was subsequently abandoned as the basis for finding a violation of the Federal Trade Commission Act in the opinion of the Commission.

16. Whether or not Paragraph (3) of the Commission's Order is improper because there is no charge in the complaint that petitioner's terms of credit are not lenient, there was no way for petitioner to know that this was an issue in the case, and the Commission has in effect convicted petitioner on a new charge or theory of offense different from the charges alleged in the complaint and tried before the Hearing Examiner.

17. Whether or not Paragraph (3) of the Order is unenforceable for the reason that it is vague and does not inform petitioner what conduct is forbidden and what conduct is allowed thereunder.

18. Whether or not the Commission has not mistaken its own and petitioner's roles in the hearing process by requiring, as reflected in its opinion, petitioner to disprove the charges contained in the Commission's complaint, rather than by proving its charges with direct, positive, and substantial evidence.

JURISDICTIONAL STATEMENT

A cease and desist order was entered against petitioner by the United States Federal Trade Commission on December 2, 1967. This Court has jurisdiction to modify or set aside such orders of the Federal Trade Commission pursuant to Section 5 (c) of the Federal Trade Commission Act, (15 U. S. C. 45 (c)), upon timely filing of a petition for such review. Such a petition for review was filed with this Court in proper form and manner by petitioner.

STATEMENT OF THE CASE

On September 29, 1966, the Federal Trade Commission issued its complaint in this matter. Prehearing conferences were held on November 22, 1966, December 12, 1966 and March 20, 1967. Thereupon hearings in this matter commenced on March 20, 1967, the record was closed on March 24, 1967, and Proposed Findings of Fact were filed by both parties thereafter.

On June 26, 1967, the Hearing Examiner issued his initial decision in this matter dismissing the complaint in its entirety because of the failure of proof of the allegation of the complaint. Counsel supporting the complaint appealed from this initial decision and the matter was reviewed by the Federal Trade Commission. Briefs were submitted to the Commission and oral argument was heard by the Federal Trade Commission on October 31, 1967.

Thereafter, on December 2, 1968, the Commission issued its opinion, vacating the decision of the Hearing Examiner in its entirety, entering its own findings and conclusions, and entered a cease and desist order against petitioner. Petitioner asks for review of that opinion and order of the Federal Trade Commission by this Court.

The petitioner in this proceeding is an individual, Leon A. Tashof, trading as New York Jewelry Company. Petitioner's place of business consists of a single

retail store, located at 719 - 7th Street, N. W. in the District of Columbia, about three and a half blocks from the headquarters office of the Federal Trade Commission. Petitioner has been engaged in his present business, and has been operating under the style New York Jewelry Company for over 40 years. (Tr. 136) Petitioner is engaged in the sale of watches, jewelry, eyeglasses, small appliances, and furniture. For calendar year 1965, petitioner's gross sales were in the area of \$350,000. Petitioner's only business is this small retail store.

REFERENCES TO RULINGS

1. Initial Decision, entered by the Hearing Examiner on June 26, 1969.
2. Final Order and Opinion of the Federal Trade Commission issued on December 2, 1968.

STATUTES INVOLVED

1. Title I and Title V of the Act of May 29, 1968 (Public Law 90-321; 82 Stat. 146 et seq.) which may be cited as the Consumer Credit Protection Act; and Regulation Z promulgated pursuant thereto by the Federal Reserve Board, published at 12 CFR 226, effective July 1, 1969.
[Since the Act and Regulation are lengthy and complex, copies of the Act and Regulation will be supplied to the Court in pamphlet form pursuant to Rule 28 (f) of the Federal Rules of Appellate Procedure.]

SUMMARY OF ARGUMENT

1. Petitioner argues that there is no substantial evidence contained in the record when viewed as a whole to support the issuance of any order against petitioner by the Commission.

2. The complaint contains a charge that petitioner's advertisement of eyeglasses at the price of \$7.50 was not a bona fide offer of merchandise at that price but was made solely for the purpose of inducing prospective purchasers to enter petitioner's place of business whereupon the quality of the \$7.50 eyeglasses was disparaged and their purchase otherwise discouraged. This is what is commonly referred to as a "bait and switch" charge.

Although the complaint alleges that the quality of the \$7.50 eyeglasses was disparaged and the purchase otherwise discouraged, there is no evidence in the record to substantiate this charge. Instead, the Commission surmises that since very few pair of \$7.50 eyeglasses were sold at the price of \$7.50, petitioner was disparaging their quality or discouraging their sale. Petitioner's position on this point is that disparagement or discouragement of sales is an essential element of the "bait and switch" violation, and must be proved by direct evidence. There is no evidence of such conduct in the record, and therefore the charge has not been proved.

Further, all litigated Commission cases involving a "bait and switch" charge, contain direct and positive evidence of the acts of disparagement or discouraging of sales. As far as petitioner is aware, the Commission has never found any respondent guilty of a "bait and switch" violation on a record that does not contain direct evidence of the acts of disparagement or discouraging of purchases. The failure of the Commission to provide proof of this element of the offense in this proceeding is fatal to the Commission's case.

3. The complaint also charges that in making sales on credit, petitioner

failed to adequately and fully inform his customers of the credit charges or financing fees imposed upon them. Petitioner argues that petitioner has always attempted to make disclosure of credit information. However, prior to the passage of "Truth-in-Lending" Act, the items of information disclosed by petitioner did not correspond in detail with the specific requirements under that Act. Nonetheless, petitioner was making good faith efforts to make disclosure of credit information; efforts similar to those made by most retail credit sellers throughout the country.

Furthermore, petitioner asserts that the Federal Trade Commission did not have authority under the Federal Trade Commission Act to require the affirmative disclosure of credit information, except in instances where there was a deception or misrepresentations of credit information. All prior litigated Commission matters, wherein the Commission has required the disclosure of credit information, have involved credit term misrepresentations. The Commission's power to require disclosure was based upon the existence of those misrepresentations. In the present case, the complaint does not charge any misrepresentation, nor was there any.

And if the FTC had the power under the FTC Act to require the affirmative disclosure of retail credit terms, in detail, then the recent enactment by the Congress of the "Truth-in-Lending" Act and the elaborate requirements for affirmative credit disclosure thereunder were unnecessary.

Lastly, the recently enacted "Truth-in-Lending" bill covers petitioner. Petitioner argues that the disclosure requirements of that Act are more than adequate to protect the public interest, and to the extent that the Commission's order requiring disclosure exceeds the requirements of the "Truth-in-Lending" Act, the Commission has no authority to require such disclosure; to the extent that the Commission's order corresponds with the requirements of the "Truth-in-Lending Act, it is unnecessary.

4. Petitioner argues that the charges made in PARAGRAPHS SEVEN and EIGHT of the Commission's complaint are vague and unclear and that petitioner was not thereby informed of the violations of the FTC Act being charged against him.

Furthermore, the case was tried by the Hearing Examiner, and defended by petitioner on the basis that these paragraphs of the complaint charged that petitioner's prices were "unconscionably high" in that they "greatly exceeded" the prices charged by other sellers of similar merchandise. In its decision the Commission stated that:

"Thus we do not agree with the Hearing Examiner or with respondent that the sole or primary charge in these paragraphs is that respondent's prices are unconscionably high."

The Commission then proceeded to decide the case on the grounds that petitioner's credit policies are not "lenient". Petitioner argues that this issue was not raised in the complaint, and that the Commission by substituting an issue in its decision, has deprived petitioner of both notice and hearing on the substituted issue.

Petitioner further argues that the basic issue raised in these paragraphs of the complaint is that petitioner's prices were "unconscionably high" because they "greatly exceeded" the prices charged by other sellers of similar merchandise. The complaint will stand or fall on this charge, and petitioner contends that the evidence in the record simply does not support the charge that petitioner's prices were unconscionably high in that they greatly exceeded the prices charged by others. Further petitioner contends that the evidence in this regard is insubstantial and insufficient, that it does not show that petitioner's prices were unconscionably high, and that the Commission has relied upon improper or incompetent evidence.

5. Lastly, petitioner objects to the order entered by the Federal Trade Commission on the grounds that it is unsupported by the evidence, that parts of

it exceed the Commission's statutory authority under the FTC Act, that parts of it are vague and imprecise, and that there is no substantial evidence in the record to support its issuance.

ARGUMENT

- I. THE CHARGE THAT THE ADVERTISING OF EYEGLASSES AT A PRICE OF \$7.50 WAS NOT A BONA FIDE OFFER OF THE MERCHANDISE AT THE STATED PRICE BUT WAS MADE FOR THE PURPOSE OF INDUCING PURCHASERS INTO PETITIONER'S STORE TO SELL THEM EYEGLASSES AT SUBSTANTIALLY HIGHER PRICES.

The complaint, in this connection, charges petitioner with what is commonly known as a "bait and switch" violation. The complaint alleges petitioner has advertised regarding the sale of eyeglasses, and that the following advertisement, quoted in the complaint, is typical and illustrative of such advertisements:

"DISCOUNT
EYEGLASSES
MADE WHILE YOU WAIT
Price includes
lenses, frames
and case

-from \$7.50
complete"

(Complaint, Paragraph Four)

The complaint goes on to charge that this offer of eyeglasses at a price of \$7.50 is not a bona fide offer, but is made solely for the purpose of inducing prospective purchasers to enter petitioner's place of business, whereupon the quality of the \$7.50 eyeglasses is disparaged and the purchase is other discouraged.

The Commission has placed in evidence one sample advertisement which appeared in The Washington Daily News on January 29, 1965 (CX 114, Tr. 314). Testimony shows that this ad ran approximately once a week for the period of a year and a half. The date on which Commission Exhibit 114 appeared, January 29, 1965, was sometime during the middle of the ad campaign. (Tr. 355) Therefore, this campaign began sometime during 1964 and was discontinued before the end of 1965. (Tr. 418, 420)

The advertisement was not quoted in its entirety in the complaint. The actual text of the advertisement also contains the following language: "oculists' prescription filled, or have your eyes examined by our registered optometrist.

Moderate examining fee." (See CX 114) Eyeglasses, at a price of \$7.50, were thus offered to customers bringing with them a signed prescription from an ophthalmologist.^{1/}

The stipulated evidence shows that less than ten pair of eyeglasses were sold at the \$7.50 price, under such circumstances, in each of the years 1964 and 1965. (Tr. 420) This advertising campaign had been discontinued prior to the start of 1966, and no sales of eyeglasses were made at the \$7.50 price during 1966 or subsequently.

While the number of eyeglasses sold during 1964 and 1965 at this price was only a small portion of petitioner's total sales of eyeglasses, there is no evidence to indicate that petitioner did not honor the terms of the advertisement. The purchase of eyeglasses at \$7.50 was not discouraged by disparaging their quality (Tr. 382).

As the hearing examiner found in his Initial Decision:

"The Commission has offered into the record absolutely no evidence, either from store personnel, from customers, or from any other source, that sales of eyeglasses at \$7.50 were discouraged, or that the quality of such eyeglasses was ever disparaged." (Initial Decision, p. 5)

The evidence adduced by the Commission did not support the allegations of the complaint. Eyeglasses were sold according to the terms and qualifications of the advertisement, and no attempt was made to disparage, or "switch" prospective customers from this merchandise.

The Commission failed to prove any disparagement or discouragement of the purchase of such eyeglasses on petitioner's part, and now contends that

^{1/} Oculist and ophthalmologist are synonymous terms. (Tr. 421; see also Webster's New Collegiate Dictionary, 2d ed.) An ophthalmologist is a licensed Doctor of Medicine who specializes in the care and treatment of the eye and eye diseases, and who can and does prescribe corrective eyeglasses for vision defects caused by refractive errors in a patient's eyes.

proof of the fact of discouraging purchases or disparagement is unnecessary. Petitioner strongly urges the contrary view, that discouragement of purchase is an essential element of the deception or misrepresentation involved, and that the charge of violating Section 5 fails if such discouragement is not present.

In order for the Commission to sustain its evidentiary burden in proving the allegations of the complaint, there must be an affirmative showing that the offer was not "bona fide". From this arises the necessity of proving that the advertiser had refused to sell the merchandise, or had produced merchandise in poor or unusable condition, or had disparaged the merchandise, or had discouraged its purchase in some way. The Commission has no such evidence, and has, in fact, simply disregarded this essential element of proof.

Instead the Commission offers us the argument that the relatively small number of pair of such eyeglasses sold supports an inference that the offer was not a bona fide offer. We refer the Court to pages 12 and 13 of the Opinion of the Commission in which the Commission discusses the rationale underlying its decision on this point. Those pages contain the following comments of the Commission in discussing the evidence and ruling upon this issue:

"Respondent's customers are low income consumers, many of whom, we can infer would be anxious to make the cheapest purchases possible." (Commission's Opinion, p. 12)

"We think that these facts by themselves raise a strong presumption that either respondent had no eyeglasses available at the advertised price, or that they were so unsuitable to their purpose as to be unpurchasable. . . etc." (Commission's Opinion, p. 12)

2/

"It is inconceivable to us ^{2/} that a retailer would expend the monies necessary to advertise \$7.50 eyeglasses over a year and a half period and make virtually no sales of the advertised product" (Commission's Opinion, p. 12)

^{2/} Respondent would like to point out that the ad was a relatively inconspicuous ad. Appendix B to the Commission's Opinion is an enlarged reproduction from a copy of the original advertisement as it appeared in a newspaper. The reproduction in Appendix B grossly overstates the size and prominence of this

"Under such circumstances the seller must come forward with some evidence to show at a minimum the advertised product was in its store. . . ." (Commission's Opinion, p. 13)

"We are of the opinion that respondent's advertisement was not a bona fide offer. . . ." (Commission's Opinion, p. 13)

Petitioner submits that the Commission has misconstrued the law itself in deciding this point. Petitioner is aware of no rule of law that requires him to disprove inferences or "strong presumptions". The Federal Trade Commission has the burden of proving what it alleges in its complaint. It has alleged that petitioner disparaged the quality of its eyeglasses and discouraged their purchase. The allegation remains unproved. There is no evidence in the record of any such conduct on the part of petitioner. In fact, to the contrary, petitioner's manager testified that there was no such disparagement or discouragement of sales.

The Federal Trade Commission saw fit to charge petitioner with a certain course of conduct including the disparagement or discouragement of the sales of such eyeglasses at \$7.50. Petitioner is entitled to rely upon the Commission's

(Continued) advertisement. We refer the Court to Exhibit CX 114, a reproduction of one of the original newspaper pages on which this ad appeared. As the Court can see, the original ad is approximately an inch and three-quarters wide and something under five inches long. It is entirely likely that the ad did not receive much attention from consumers. And although the record does not contain any evidence on the point, the expense of this ad to petitioner would not have been very great. Proceedings by the Federal Trade Commission often involve large multimillion dollar retail sales giants. Perhaps it is conceivable that any such company possessed of an advertising department, provided with the services of an advertising agency, having cost accountants, etc. etc. would have run an ad for a year and a half without obtaining any greater results than petitioner did. But petitioner is not a giant sales corporation. Petitioner is an individual operating one small retail store. There should be nothing surprising about the fact that petitioner's operations might be carried on at less than maximum cost efficiency, or that the relatively inexpensive, unproductive ad might have been continued despite its minimal success. After all, the placement of one very tiny ad on a once-a-week basis in the back pages of the Washington Daily News is not a very high-powered advertising campaign.

complaint, and the Commission is constrained to operate within its confines. The Commission must be held to the proof of the charges it has made. And inferences and presumptions do not take the place of proof.

We must point out that the pleading by the Commission of this charge is not novel. In every "bait and switch" case which the Commission has ever prosecuted the charge has been made that the user of such bait and switch tactics has discouraged or disparaged the sale of the bait article. And in every decided case, there has been direct evidence of such disparagement or discouragement.

The Commission's Opinion mentions several cases on this point (Commission's Opinion, P. 12, Footnotes 1, 2 and 3).

The Commission's claim that other evidence of the disparagement or switch is contained in the records of some of such cases cannot obscure the fact that in each and every such case there is direct evidence of the switch, that is to say of the disparagement or the discouraging of the sale of the bait article.

In Household Sewing Machine Co. (52 FTC 250) fourteen purchaser witnesses gave testimony that the respondent's salesman discouraged them by advising them not to purchase the advertised merchandise, and by disparaging its performance, its value, etc. In Bond Sewing Stores (51 FTC 470, 478), there was testimony from the respondent himself that his salesmen sometimes disparaged the advertised machines, and furthermore the hearing examiner was able to conclude from the unanimous testimony of consumer witnesses that such disparagement and the discouraging of sales was a constant practice of the respondent's salesmen.

In Lifetime, Inc. (59 FTC 1231, 1253), purchaser witnesses testified

that the respondent's salesmen advised that the goods were not available, or that purchasers would not want them.

In Midwest Sewing Center, Docket No. 8602, paragraph 17, 143-CCH Transfer Binder, (December 3, 1964) the Commission dismissed the complaint on the specific grounds that there was no disparagement or discouragement shown on the record:

"Moreover as respondent points out, its salesmen did not disparage or downgrade the old machines in an attempt to "switch" the customers' interest to other models and in fact did not even offer to demonstrate other machines until after the witnesses had voluntarily expressed their displeasure with older machines."

In the matter of Consumer's Products of America, Docket 8679 (CCH Trade Regulation Reporter, Volume III, paragraph 18059) there is an extensive discussion of the disparagement and discouraging of sales. The Commission's opinion states that: "Nine of the witnesses testified that the salesmen disparaged the advertised product," and the opinion continues "in fact the particular means of disparagement generally employed by respondent's salesmen clearly stands out." The affirmation of the Commission's decision by the Third Circuit was on a question involving the permissible scope of the order only. (400 F.2d 930)

In these cited cases there was direct proof that the offer was not bona fide, as a result of evidence that there was disparagement or discouraging of sales. In none of these cases was this essential evidence supplied by inference based merely on an analysis of the number of articles sold, as the Commission attempts to do herein.

II. THE CHARGE THAT PETITIONER, IN CONNECTION WITH CREDIT SALES, FAILED TO DISCLOSE THE CREDIT CHARGES IMPOSED AND THE TOTAL PRICE TO BE PAID

The complaint charges in PARAGRAPH SEVEN, Section 2 that:

"In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments the total price to be paid pursuant to the credit contract."

Nothing could be further from the truth. Customers of New York Jewelry Company, including those who make purchases on credit, were informed of the terms of their transaction and the total price of the merchandise.

There were offered and received into evidence a total of 26 individual conditional sales contracts between New York Jewelry Company and its customers. These contracts show the purchase of a variety of goods, on credit, by 20 different individual customers. The earliest contract is dated on December 26, 1964, and the most recent on September 17, 1966. Table 1 lists these contracts.

Mr. Eugene Ullman, the manager of the New York Jewelry Company, was questioned on the subject of certain of these contracts and the carrying charges which they reflect, during the course of the hearings in this matter. (Tr. 189-205, Tr. 302-306) Mr. Ullman testified that several changes had been made in the policy of New York Jewelry with regard to the method of arriving at the credit charges to be imposed, during the time period covered by these contracts.

It is revealing to array these 26 contracts in chronological order as has been done in Table 1. When the contracts are arranged in the order of their dates, the sequence reveals the approximate times at which petitioner's policy

TABLE 1

(1) Date of Contract	(2) Exhibit Number	(3) Name	(4) Contract Form	(5) Cash Price Shown on Contract	(6) Carrying Charge Shown on Contract	(7) Total Price Shown on Contract
December 26, 1964	CX 17	Mary Daughtry	A	Not Shown	Not as such	Blank
September 11, 1965	CX 37	James E. Freeman	A	Not shown	Not as such	\$71.50
September 11, 1965	CX 38	James E. Freeman	A	Not shown	Not as such	\$87.90
October 12, 1965	CX 19	Walter Whitfield	A	Not shown	Not as such	\$101.63
October 29, 1965	CX 21	Roland Taylor	A	Not shown	Not as such	\$196.50
December 23, 1965	CX 22	Roland Taylor	B	\$342.25	\$63.54	\$416.06
January 8, 1966	CX 42	Synithia G. Washington	B	\$154.50	\$27.00	\$181.50
January 8, 1966	CX 43, 44*	Synithia G. Washington	B	\$59.50	\$10.65	\$70.15
January 15, 1966	CX 31	Minnie A. Henry	B	\$119.00	\$21.42	\$135.42
January 18, 1966	CX 99	C. H. Logan	B-1	\$79.00	Not shown	Not shown
January 19, 1966	CX 105	Fitta Calloway	B-1	\$42.95	Not shown	Not shown
January 27, 1966	CX 94	James L. Crowder	B-1	\$119.00	Not shown	Not shown
March 26, 1966	CX 74	Elly Freshley	B-1	\$159.00	Not shown	Not shown
March 30, 1966	CX 1	Preston W. White	B-2	\$61.30	\$62.68	\$1.38
April 5, 1966	CX 111	Barbara Brown	B-2	\$44.50	\$1.00	\$45.50
April 6, 1966	CX 112	Elsie Hall	B-2	\$25.00	\$1.00	\$26.00
April 11, 1966	CX 109	Vernetta Henderson	B-2	\$49.50	\$1.00	\$50.50
April 16, 1966	CX 68	Arthur Pratt	B-2	\$106.00	\$8.43	\$115.03
April 23, 1966	CX 89	Rosa Wesly	B-2	\$49.50	\$1.00	\$44.50*
April 25, 1966 ^b	CX 84	J. L. Dennard	B-2	\$39.95	\$1.00	\$38.45*
May 6, 1966	CX 62	Alfreda Stubbs	B-2	\$174.90	\$18.60	\$193.50
May 10, 1966	CX 121	John Edmunds	B-2	\$199.52	\$7.30	\$175.82*
July 9, 1966	CX 69	Arthur Pratt	C	\$116.00	@ 1½% per mo.	Not shown
July 21, 1966	CX 47	J. B. Johnson	C	\$125.00	@ 1½% per mo.	Not shown
July 21, 1966	CX 48	J. B. Johnson	C	\$47.00	@ 1½% per mo.	Not shown
September 17, 1966	CX 66	Arthur Pratt	C	\$17.00	@ 1½% per mo.	Not shown

* Contract shows \$6.00 down payment subtracted from \$50.50 to give unpaid balance of \$43.50 + carrying charge = contract price of \$44.50.

^b Contract undated. Dal Tex invoice covering same merchandise dated 4/25/66.

* Contract shows \$2.50 down payment subtracted from \$40.95 to give unpaid balance of \$37.45 + carrying charge = contract price of \$38.45.

* Contract shows \$31.00 down payment plus trade-in allowance subtracted from \$199.52 to give unpaid balance of \$168.52 + carrying charge = contract price of \$175.82.

* CX 43 and 44 are two copies of the same contract. Two copies of this contract were placed in evidence because limitation of the copying machine on which the copies of this contract were reproduced made it impossible to obtain the entire contract on one sheet of paper (TR 129).

regarding the method of computing these credit charges was changed. Such a tabulation provides information on the manner in which such carrying charges were disclosed, and also shows petitioner's practice with regard to the disclosure of the total purchase price for merchandise bought in such credit transactions.

In Table 1, the first column shows the date appearing on the contract, the second column shows the exhibit number of the contract, and the third column gives the name of the purchaser. Column 4 shows a code letter for each different form of contract employed, or for each different manner of computation used in connection with a given form of contract. Column 5 shows the cash price of the item or items purchased. (This is the same as the ticketed price at which the merchandise was offered for sale by New York Jewelry.) Column 6 shows the carrying charges, and Column 7 the total purchase price, as reflected by each contract in question.

The first five entries in the table relate to five contracts (CX 17, 19, 21, 37 and 38), all of which employ the same contract form. This form has been designated, in column 4, as contract form A. These five contracts reflect purchases from December 1964 through December of 1965, by James E. Freeman (CX 37, 38), Walter Whitfield (CX 19), Roland Taylor (CX 21) and Mary Daughtry (CX 17). A reference to Commission Exhibit 37 will show the form employed and the manner in which the information in question is disclosed or displayed. The other four contracts (CX 17, 19, 21, 38) are identical in form, and the comments made about this contract would apply to the transactions reflected by the other four contracts as well.

In contract form A, only the total price charged (including both the cash price and the carrying charges) is specifically revealed. In the case of this

first contract (CX 37), that price is \$71.50. The cash price of the merchandise does not appear in the body of the contract. In this instance we know from the stipulated testimony of Mr. Freeman that the price for this pair of glasses was \$59.50. (CX 7) We can also tell the cash price of the merchandise from an imprint made on the side of the contract by the cash register in the course of ringing up the transaction. This cash register imprint shows the figures "\$59.50," which corresponds with Mr. Freeman's stipulated testimony about the cash price of the eyeglasses covered by this contract. The credit charge or financing fee in this case is obviously the difference between the cash price (\$59.50) and the total price appearing on the face of the contract (\$71.50). Since disclosure of the exact amount of the total price to be charged for the merchandise is made in dollars and cents on the face of the contract, the purchaser would be made aware of the credit charge by noting the difference between the cash price at which the merchandise is ticketed, and the total price appearing on the face of the contract.

The contract of December 23, 1965 with Mary Daughtry (CX 17) has been signed in blank and neither the total price, nor by implication the credit charge, appear on this contract.

It is obvious that the use of contract form A was discontinued sometime during late December 1965, and that it was superseded by contract form B which first appears in the transaction of December 23rd with Roland Taylor. (CX 22)

The four contracts employing form B are dated from December 1965 through mid-January 1966 and reflect purchases by Roland Taylor (CX 22), Synithia G. Washington (CX 43, 44, 42), and Minnie A. Henry (CX 31).

Contract form B differs radically in format from contract form A. It

shows, in the upper right-hand portion of the contract, the total cash price, the unpaid balance after trade-ins or allowances, the carrying charges expressed in an exact dollar amount, and the total price including carrying charges. The total price is described by the phrase "time price." This is followed by blanks for showing any existing balance on the account, the total indebtedness of the account, and the payment terms. Reference to Commission Exhibit 43 will show in the case of a simple transaction how this contract form discloses the information involved.

In contract form B complete disclosure is made, both of the carrying charge expressed as a dollar amount, and of the total price for the article including the carrying charge. This contract form does not disclose the rate of carrying charge, but an inspection of the four contracts involved (CX 42, 43, 44, 22 and 31) reveals that the carrying charge percentage is approximately 18 percent.

Mr. Ullman was questioned about two contracts executed on contract form B, and falling into this group. There were the two contracts executed on January 8th by Synithia Washington. (CX 42, 43, 44) Mr. Ullman testified that, at that time, New York Jewelry figured a flat carrying charge (Tr. 201), and, after some confusion in the record, it was established that the flat carrying charge at this time was 18 percent (Tr. 201-204).

It is clear that sometime around January 1966, this method of computation was discontinued. The next four contracts, bearing dates from mid-January to March 1966 reflect purchases by Charles Logan (CX 99), Etta Calloway (CX 105), James Crowder (CX 94), and Elly Freshly (CX 74). These contracts are all

a form identical with contract form B discussed just previously, but it is apparent that a change in the method of carrying charge computation was made. These contracts are designated in Table 1 as form B-1.

In these contracts only the cash price is disclosed. The contracts do not on their face reveal either the amount or rate of the carrying charges. There is no evidence in the record which would indicate whether there were any carrying charges on these four contracts, or what the amount or method of computation of such carrying charges were, if such charges existed. Mr. Ullman was questioned about the contract with Charles H. Logan, dated January 18, 1966 (CX 99), and was not able to tell from that one contract why no carrying charges were reflected on its face.

At approximately the end of March 1966, New York Jewelry made another change in its method of computing carrying charges, and in the manner of disclosure of such charges and the total credit sales price. We refer now to the next group of nine contracts in chronological order, bearing dates from March 30, 1966 through May 1966. These contracts were entered into by Preston White (CX 1), Barbara Brown (CX 111), Elsie Hall (CX 112), Vernetta Henderson (CX 109), Arthur Pratt (CX 68), Rosa Wesly (CX 89), J. L. Dennard (CX 84), Alfreda Stubbs (CX 62), and John Edmunds (CX 121). These contracts still employed basic contract form B, but now in addition to the cash price, a definite dollar amount is shown as carrying charges, and a total price (being the sum of the cash price and the carrying charges) is also disclosed on the face of the contract. These contracts are designated in Table 1 as form B-2.

According to the testimony of Mr. Ullman, during this time period, New York Jewelry employed a pre-computed chart or table to determine carrying charges. This chart was based on the cash price involved, and the term, or length of the contract. As a result, the amount of carrying charges disclosed on the face of the contract would vary, depending both on the amount of the cash price, and on the time period over which payments were to be made. Obviously,

a credit sales contract to be paid up in a short time would bear a smaller carrying charge (and hence the carrying charge would be a smaller percentage of the cash price) than would a contract with a longer term. (Tr. 100-1, 105-109, 202-203) Mr. Ullman testified that the basic carrying charge rate used in preparing this pre-computed table was approximately 1 percent per month (Tr. 304, 190).

As shown in Table 3, a comparison of the cash prices, carrying charges and terms of these nine contracts, reveals a close correspondence between the overall carrying charge percentage and the number of weeks the contract was to run.

We might also point out that five of these nine contracts bear carrying charges in the even amount of \$1.00. All five of these contracts have very short terms, and the merchandise involved has a relatively small cash price. It is not unlikely that the \$1.00 charge represented a minimum charge shown by the chart or table of carrying charges, applicable to contracts with either small face amounts, or short terms, or both.

Sometime between May 10th and July 9th, which is the date of the next contract offered in evidence, another change was made in the method of computing and disclosing carrying charges and total price. We refer now to the final four contracts, shown in Table 2 above, those with Arthur Pratt (CX 69), Johnnie Bruce Johnson (CX 47, 48) and, again, Arthur Pratt (CX 66). These four contracts employ a new contract form different from contract form B.

Attention is invited to Commission Exhibit 66 as an example of this new form, referred to in Table 1 as form C. In the upper righthand corner of the contract appears the following:

"time price: cash price plus carrying charge of 1 1/2 percent per month on the unpaid balance, compounded."

Table 2

Comparison Showing Relation of Carrying Charge
Percentage to Length of Contract Form

<u>Exhibit Number</u>	<u>Approximate Repayment Term (in weeks)^{a/}</u>	<u>Carrying Charge as Percentage of Cash Price (approximated)</u>	<u>Carrying Charge.</u>	<u>Cash Price</u>
CX 1	4 ^{b/}	2.26% ^{c/}	\$ 1.38	\$ 61.30
CX 109	5 ^{b/}	1.98% ^{c/}	1.00	50.50
CX 89	7	2.12%	1.00	49.50
CX 111	9	2.25%	1.00	44.50
CX 84	11	2.52%	1.00	39.95
CX 121	23	3.66%	7.30	199.52
CX 112	21	4.00%	1.00	25.00
CX 68	32 ^{b/}	7.95% ^{c/}	8.43	106.00
CX 62	32	9.40%	18.60	174.90

^{a/} As computed from contract.

^{b/} This is the approximate time in weeks, which it would take to pay off the contract cash price at the repayment schedule shown. Since this contract shows an additional account balance, the total account would not be completely paid in so short a time.

^{c/} These contracts bear interest percentages which are slightly higher than we would expect to find judging from cost of the merchandise purchased in the contracts. In all three instances, however, the contract reflects the pre-existence of an unpaid balance on the account resulting from the previous purchase of other merchandise. These larger balances undoubtedly necessitated a longer term of repayment, and, hence, tended to increase the percentage of carrying charge to face amount of the contract.

And at the bottom of the block on the upper right-hand side of the contract, where the blanks for filling in the dollar amounts appear, the total is now recorded as:

"Total \$ _____ plus carrying charge of 1 1/2 percent per month on the unpaid balance compounded."

In addition, next to the place for the purchaser's signature, the legend "purchase is subject to a carrying charge of 1 1/2 percent per month on the unpaid balance" has been printed in red ink.

On the four contracts in evidence which employed form C, the carrying charge is shown not as a definite dollar amount, but as "1 1/2 percent per month on the unpaid balance." The total price is not disclosed on this form of contract, nor can it be, since the total price to be paid will vary depending upon the rate at which the account is paid up.

The practice of charging one and a half percent per month on the unpaid balance of an open end charge account is one which is extremely common in the retail field today. Retail charge accounts and retail revolving charge accounts, etc. show the credit charge on such purchases to be at the rate of one and a half percent per month. Petitioner conformed his practice of stating interest charges to that which was used by almost every other retail seller of merchandise.

As the Hearing Examiner found:

"It should be apparent from the foregoing that New York Jewelry has always attempted to make the fullest and most adequate disclosure of both the total price to be paid, and the carrying charges imposed on credit sales. During the first half of 1966, respondent experimented with four different systems of charging and disclosing such carrying charges, and revised its conditional sales contract form twice in an effort to impose carrying charges which could be readily disclosed to, and understood by, its customers." (Initial Decision, p. 14)

Petitioner concluded by adopting the method of imposing and disclosing carrying

charges used by probably the majority of American retail establishments which make credit sales.

Furthermore, petitioner submits that the complaint charge regarding failure to adequately and fully inform customers of credit charges, etc. does not have any sound legal basis. The complaint speaks only of the absence of an affirmative disclosure of information, while the Commission's litigated decisions in this area have been limited to requiring credit disclosure only in cases where there had been misrepresentations, or false representations of credit information, finance rates, etc.

The Commission in its opinion (page 28) states that it has been actively enforcing Section 5 in the field of credit transactions for decades. The Commission's brief then discusses in a footnote (number 1 on page 28) a number of cases which it advances as support for its proposition. What the Commission's opinion does not tell us is the fact that all of the litigated cases cited involve misrepresentations regarding credit charges, etc. The complaint in this case does not charge respondent with misrepresenting credit information, but merely with failure to make an affirmative disclosure. None of these cases can properly stand as a precedent for action in the present case, dealing as it does with an absence of positive disclosure by respondent rather than any actual misrepresentation.

General Motors Corp. (30 FTC 34, 1939), Ford Motor Co. (30 FTC 49, 1939), Lester Carr (55 FTC 1406, 1959), Bob Wilson, Inc. (57 FTC 1213, 1960), and Consolidated Mortgage, Docket 8723 (February 19, 1968) all deal with cases in which the Commission charged that there were misrepresentations as to credit information, or financing rates and so forth. None of the remaining cases were contested cases; rather they involved orders entered into by consent, or, in one case, by default.

It is clear that the Commission has never required the affirmative disclosure of the amount and rate of credit charges in a contested proceeding. And in a matter of this importance, i.e., whether the Commission possesses the power to require such affirmative disclosure where no misrepresentation is present, it appears questionable for the Commission to claim as authority for its position, the result of such uncontested cases. Consent settlements cannot serve as authority. Results in such proceedings have not been subjected to, nor have they benefited from, the searching analysis that an adversary proceeding creates. The fact that certain respondents have voluntarily chosen to agree with the Commission to make affirmative disclosure of such matters, cannot stand as valid support for the conclusion that the Commission has the power to require such disclosures.

And it is not clear that the Commission has or had the power under the terms of the Federal Trade Commission Act to require affirmative disclosure of credit terms in retail transactions.

The recent enactment by the Congress of the Consumer Credit Protection Act, commonly known as the Truth-in-Lending Act (Public Law 90-321; 82 Stat. 146, enacted May 29, 1968) makes it plain that the Commission did not possess the power to require the affirmative disclosure of credit terms prior to the enactment of the Truth-in-Lending Act, and makes it plain that any such failure to affirmatively disclose credit terms was not previously a violation of the Federal Trade Commission Act.

Section 108 (c) of the Truth-in-Lending Act recites:

"For the purposes of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act."

Congress thus rendered in May of 1968, a failure to affirmatively disclose certain designated categories of retail credit information a violation of the FTC

Act. Congress need not have made such lack of affirmative disclosure a violation of the FTC Act, if it had already been a violation. Indeed, if the Federal Trade Commission had always had the power to regulate affirmative credit disclosure as it claims in its opinion, then the elaborate structure regulating the disclosure of retail credit terms embodied in the Truth-in-Lending Act, and the Federal Reserve Board's Regulation Z promulgated thereunder, need not have been erected.

As the Hearing Examiner commented in his initial decision, (which was written before the enactment of the Truth-in-Lending Act, while that legislation was being considered by the Congress in committee hearings):

"Furthermore, the attempt to impose some type of price control and credit regulations under Section 5 would require more than plowing new ground. Indeed the Congress has been struggling with proposed legislation in this area for a number of years. If Section 5 was intended to cover matters of this type, it seems unlikely that the Congress would be seeking special legislation to cover some of the practices alleged in the complaint." (Initial decision, page 15).

Under the Truth-in-Lending Act, the Federal Trade Commission is one of the agencies charged with the enforcement of the requirements of the Act. (Consumer Credit Protection Act, §108) However, the Federal Reserve Board is charged with the promulgation of regulations regarding the manner in which the affirmative disclosure of retail credit terms shall be made. The Federal Reserve Board has promulgated its Regulation Z, published at 12 CFR 226, effective on July 1, 1969. The regulation is complex and exhaustive in detail,

doubtless was the consideration that went into its drafting. Petitioner is bound by the Truth-in-Lending Act, and petitioner is bound to follow the detailed affirmative credit disclosure requirements of the Federal Reserve Board's Regulation Z. As is discussed below in the section dealing with the Commission's

Order in this proceeding, to the extent that the order of the Federal Trade Commission in this case duplicates the requirements of Regulation Z and the Truth-in-Lending Act, it is unnecessary. To the extent that it exceeds the requirements of Regulation Z and the Truth-in-Lending Act, the order lacks statutory authority and is without force and effect.

III. THE CHARGES OF PARAGRAPHS SEVEN AND EIGHT OF THE COMPLAINT AND THE "EVIDENCE" ADDUCED THEREUNDER

We turn now to PARAGRAPHS SEVEN and EIGHT of the complaint, and to that portion of the Commission's Opinion entitled "Respondent's Promises of Easy Credit and Charging Unconscionably High Prices", which considers these paragraphs of the complaint, their meaning and the evidence of record supporting them.

A. PARAGRAPHS SEVEN and EIGHT of the Commission's Complaint Are Vague and Unclear, and Did Not Properly Inform Petitioner of the Violations Alleged.

PARAGRAPHS SEVEN and EIGHT of the complaint are vague, unclear and confusing to the point where petitioner was not reasonably made aware of the charges of violation levelled against him. The Court's attention is specifically drawn to these two paragraphs. They are endlessly repetitious, hopelessly confusing, unclear and ill defined. It was, and is, almost impossible from the reading of PARAGRAPHS SEVEN and EIGHT for petitioner to know precisely what conduct of his was being complained of.

It would seem, however, that all of the various charges, allegations or comments in PARAGRAPHS SEVEN and EIGHT are made to hinge upon the charge that the prices at which respondent sells merchandise are unconscionably high, in that they greatly exceed the prices charged for similar merchandise by other sellers, and that this is the crux of the charge:

"Without determining his customer's financial ability to pay or their credit rating respondent sells merchandise to them on 'easy credit terms' at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash." - From PARAGRAPH SEVEN, see p. 30 of the Commission's Opinion. (Emphasis added)

"...to purchase merchandise on credit terms that, contrary to respondent's representations, are not easy because of the fact that the prices charged by respondent for such merchandise are unconscionably high and greatly in excess of the reasonable or fair market value of such merchandise." - PARAGRAPH EIGHT of the complaint, see p. 30 of the Commission's Opinion. (Emphasis added)

This case was tried and decided by the Hearing Examiner on the basis that PARAGRAPHS SEVEN and EIGHT of the complaint charged that petitioner's prices were unconscionably high in that they were greatly in excess of the prices charged for similar merchandise by other sellers thereof. A reading of the record will show that the Commission's Complaint Counsel devoted the major part of their effort at the hearings to this issue, and that petitioner defended at the hearings in this proceeding on the same basis.

Now, in its Opinion, the Commission has informed petitioner that the allegations of the complaint are different than had been thought: (Commission's Opinion pp. 29-33)

"Thus we do not agree with the Hearing Examiner or with respondent that the sole or primary charge in these paragraphs is that respondent's prices are unconscionably high." (p. 29, Commission's Opinion)

If the Federal Trade Commission and its own Hearing Examiner disagree as to what the complaint meant, or as to what the complaint charged, then how can petitioner be expected to know? And it is elemental in our system of jurisprudence that a complaint that makes a charge in an unclear, or unintelligible fashion is deficient since the party charged is not thereby given effective notice of the charges made against him.

At any rate the complaint is confusing and badly drawn. It is so confusing and so badly drawn, that according to the Commission's own opinion, petitioner, as well as the Commission's Hearing Examiner, have failed to properly apprehend

the nature of the charge being made against petitioner in PARAGRAPHS SEVEN and EIGHT of the complaint. The fact that the Commission must disagree with the Hearing Examiner that "the sole or primary charge in these paragraphs is that respondent's prices are unconscionably high" is more than adequate proof that the complaint was deficient in that it did not adequately apprise petitioner of the charges being made against him. Therefore the dismissal of PARAGRAPHS SEVEN and EIGHT of the complaint should be ordered by this Court on the grounds that they are so vague and confusing as to make it impossible for petitioner to know what violation or violations of the Federal Trade Commission Act were alleged therein.

B. The Commission Has Decided Issues Not Raised in its Complaint in Connection With The Allegation of PARAGRAPHS SEVEN and EIGHT

The Commission has changed its horses in midstream. The Commission states on page 29 of its Opinion that the claim that petitioner's prices were unreasonably high is not the central issue of the complaint's charges. Instead, petitioner discovers that the principal charge is that petitioner's credit is not "easy":

- (1) because petitioner's cash prices are unconscionably high
and
- (2) because petitioner, after giving the appearance of dealing leniently, rigidly enforces his credit rights.

We find nothing in PARAGRAPHS SEVEN or EIGHT of the complaint about the rigidity of petitioner's enforcement of its credit rights, and certainly, nothing about the leniency with which petitioner does or does not treat his customers.

The issue is not properly raised in the complaint - in fact it is not raised

at all. It has been manufactured and injected by the Commission at this point in the proceedings in an attempt to divert attention from the allegation that respondent's prices were unconscionably high - an allegation which is unsupported by the evidence, and which is thoroughly discredited by the record.

Nor is this the first time that the Federal Trade Commission has chosen to seek a new theory of the offense when what its complaint alleges is discovered to be unfounded. We allude here to the matter of Rodale Press v. F.T.C. _____ U.S. App. D.C. _____; 407 F.2d 1252, (1968); CCH 1968 Trade Cases ¶ 72603.

In Rodale the Commission had decided charges different from those raised in the complaint, and this Court's opinion in Rodale makes it plain that such conduct will not be permitted:

"The theory under which the complaint was issued and under which the hearing before the examiner was held differed from the theory upon which the complaint was ultimately sustained by the Commission. The Administrative Procedure Act in 5 U.S.C. § 554 (b) (1964) provides in pertinent part: 'Persons entitled to notice of agency hearing shall be timely informed of . . . (3) the matters of fact and law asserted.' (Emphasis supplied) Hence it is well settled that an agency may not change theories in midstream without giving respondents reasonable notice of the change. NLRB v. Johnson, 322 F.2d 216, 219-20 (6th Cir. 1963); NLRB v. Fletcher Co., 298 F.2d 594 (1st Cir. 1962).

"By substituting an issue . . . the Commission has deprived petitioners of both notice and hearing on the substituted issue. The evil at which the statute strikes is not remedied by observing that the outcome would perhaps or even likely have been the same. It is the opportunity to present argument under the new theory of violation, which must be supplied."

* * *

"The essential defect of the proceeding is that the Commission has . . . decided the case on a basis different from that on which it was brought, tried and decided by the trial examiner."

Petitioner submits that the Federal Trade Commission has based a major part of its decision and opinion in this case on an issue that was not properly raised in the complaint at all.

C. The Record Evidence Does Not Support The Commission's Conclusion That Petitioner Violated The Federal Trade Commission Act As Alleged in PARAGRAPHS SEVEN and EIGHT of the Complaint

1. The Statutory Standard Regarding Consideration and Sufficiency of The Evidence

Petitioner strongly urges that the record, when viewed as a whole, simply does not support the Commission's decision or its order, and that substantial evidence of the violation of the Federal Trade Commission Act is not present in this record.

The legal standard to be applied herein is that first enunciated by the Supreme Court in Universal Camera Corp. v. NLRB (340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456:

"We hold that the standard of proof is specifically required of the labor board by the Taft Hartley Act is the same as that to be exacted by courts reviewing every administrative action subject to the Administrative Procedure Act." (At page 487)

* * *

"Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting the labor board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or that evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement of both statutes that courts consider the whole record." (Page 487)

The decision in Universal Camera emphasizes the role of the Hearing Examiner, and specifically allows a reviewing court to consider the report or

3/

initial decision of the agency Hearing Examiner.

"It is therefore difficult to escape the conclusion that the plain language of the statute directs a reviewing court to determine the substantiality of evidence on the record, including the examiner's report." (Page 493)

* * *

"The substantial evidence standard is not modified in any way when the board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the board's" (Page 496)

While Universal Camera dealt with a decision reached by the NLRB under its statute, there is no question but that the same standard applies to the Federal Trade Commission in its proceedings. The Supreme Court has held that the review standards established in the Universal Camera decision apply in all instances of court review of agency decisions. See FTC v. Standard Oil Co., 355 U.S. 396, 401; 78 S. Ct. 369 (1958).

This court has applied the Universal Camera standard to a review of the record evidence in a Federal Trade Commission proceeding.

"The Supreme Court has said that in reviewing the substantiality of the evidence we must consider all the evidence including 'the body of evidence opposed to the board's view'. (Citing Universal Camera). Viewed in this way we are convinced that the order of April 15, 1963 is not supported by substantial evidence on the record as a whole." (Texaco, Inc. v. FTC, 118 U.S. App. D. C. 366; 336 F. 2d 754 (1964))

3/ As petitioner discusses in appropriate places below, the hearing examiner, in his initial decision, dismissed this complaint in its entirety. The hearing examiner was present during the presentation of all the evidence, he observed the witnesses, inspected the documents and viewed the exhibits; he heard all the questions and answers, and was able to see for himself, firsthand, the witnesses and evidence offered into the record in this proceeding. The initial decision clearly shows, that after hearing all the evidence, the hearing examiner was totally unconvinced of the truth of the charges contained in the complaint.

In accord, see the careful opinion of the ninth circuit in the Carter's Little Liver Pill case, Carter Products, Inc. v. F.T.C., 268 F.2d 461, 492 (1959):

"The reports contain a host of decisions dealing with the scope of judicial review of orders of federal administrative agencies, and an imposing array of them deal with decisions of F.T.C. It is unnecessary to analyze the holdings in many of the apposite decisions since a comparatively few of them serve to provide a satisfactory answer to the basic review problem confronting us. These few cases have delineated the controlling principles we must apply.

"The landmark decision and the one most frequently cited is the Universal Camera Corp. v. NLRB, 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456. In this decision the Supreme Court spelled out with care the general rules that should govern Courts of Appeal in their work of reviewing orders and/or decisions of administrative agencies. The Court held, inter alia, (in conformance with the requirement of the Administrative Procedure Act 5 U.S.C. § 1001 et seq.) that such decisions must be supported by substantial evidence on the record considered as a whole. If after canvassing and fairly assessing the entire record a reviewing court cannot conscientiously find that the evidence supporting an agency decision is substantial, good conscience dictates that the agency decision be reversed. In so appraising the whole record the reviewing court must take into account whatever in the record fairly detracts from the weight of the evidence which underlies the agency order and is opposed to the agency's view."

The Rayex case involved a charge of preticketing, and the F.T.C.'s decision against Rayex was reversed by the second circuit for the same lack of substantiality of the record evidence (Rayex Corporation v. F.T.C., 317 F.2d 290 (1963):

"We are in complete agreement with the Commission and other Circuits that this apparently prevalent practice is not to be condoned and that such deception of the buying public should be eliminated. The Commission nevertheless is still required to prove by

substantial evidence that preticketing is being used in a proscribed manner by the particular respondent involved in any case." (p. 292)

* * *

"There may have been sufficient evidence here to justify suspicion that a preticketing policy was being deceptively used and enough to justify an investigation but such meager proof is not enough to justify a cease and desist order." (p. 294)

See also Niresk Industries v. F.T.C., 278 F.2d 337,340 (1960):

"The Commission, as other administrative agencies, occupies a unique position which was unknown to the commonlaw jurisprudence. The Commission wears all of the hats involved in the proceedings instituted under its authority. It is, at once, the accuser, the prosecutor, the judge and the jury. The wide scope of its discretion in the resolution of questions within its realm is founded and sustained by the courts upon the fact that its jurisdiction exists in a specialized field, wherein expertise is felt to be a necessity. Under those circumstances we feel that the Commission should assume a wider responsibility than that necessarily undertaken by a private litigant and substantiate its injunctive orders upon the concrete basis of a thorough investigation and full presentation of evidence whenever the existence of unfair or deceptive practice is charged against any respondent."

2. The Evidence of Record Regarding Pricing and the Commission's Decision on This Subject

We must turn now to a discussion of that portion of the Commission's Opinion dealing with "easy credit" and "unconscionably high prices." (Commission's Opinion, pp. 29-44).

This section of the Commission's Opinion is replete with guesswork and speculation. It is not founded on any substantial, probative evidence, as a reading of the record will clearly show.

As petitioner has discussed above, the Commission's Opinion attempts to sidestep its own charge that petitioner's prices were "unconscionably high prices that greatly exceed the prices charged for like or similar merchandise." (See pages 29-33, Commission's Opinion).

Despite this, petitioner submits that whether or not respondent's prices are 'unconscionable' is still squarely in issue in this case. The complaint alleges that petitioner's prices are unconscionably high in direct terms:

"Without determining his customers' financial ability to pay or their credit rating, respondent sells merchandise to them on 'easy credit terms' at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area, whether sold on credit or for cash." (PARAGRAPH SEVEN, Section 2) (Emphasis supplied)

"[Customers are] . . . induced to purchase merchandise on credit terms that, contrary to respondent's representations, are not easy because of the fact that the prices charged by respondent for such merchandise are unconscionably high and greatly in excess of the reasonable or fair market value of such merchandise." (PARAGRAPH EIGHT, Section 1) (Emphasis supplied)

"[Respondent's prices] . . . are not competitive nor do they reflect the reasonable or fair market value of such merchandise because they are unconscionably high and greatly in excess of the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash." (PARAGRAPH EIGHT, Section 2) (Emphasis supplied)

Therefore we must focus on the question of whether or not petitioner's prices were unconscionably high in that they greatly exceeded prices charged by others. And the answer is that the record is empty of evidence to support the Commission's charges. Petitioner submits again that this charge, namely that petitioner's prices were greatly in excess of the prices charged by others, is a crucial charge. The Commission's case boils down to a claim that almost everything petitioner does is wrong because his prices are outrageously higher

than anyone else's. But the record does not provide substantial support for this allegation.

We believe that the Court will be surprised when it examines, in detail, the various items which the Commission has considered to be probative 'evidence' in this regard.

Perhaps respondent should point out at this time the emotional climate surrounding and pervading this case from its very inception. During the latter part of 1965 and continuing into the summer of the year 1966, the Federal Trade Commission, in response to popular political ferment, attempted to throw itself and its resources into the "War on Poverty". It issued press release after press release, detailing and highlighting its activities and involvement in the "War on Poverty". The Commission formed a special task force of its staff members in order to pursue this activity and initiated a large number of complaints against retail establishments in the Washington, D. C. area in order to show that it was actively and vigorously fighting against poverty.

Indicative of the Commission's publicly announced involvement in the 'war on poverty' are a variety of press releases and newspaper stories reciting statements of various FTC officials and detailing the Commission's activities.

Illustrative are the comments in a newspaper article which appeared on Monday, March 20, 1967, the day the hearings in this matter commenced before the Hearing Examiner. (This newspaper article, and other similar ones are reproduced in full in an Appendix):

"Public hearings began today on a Federal Trade Commission complaint against the New York Jewelry Co., 719 7th St. NW, alleging unfair and deceptive practices that particularly victimize poor customers.

The complaint is one of 13 that have been issued in rapid succession over the past seven months as a result of a special consumer protection program initiated in the District in July, 1965.

The program is aimed at cracking down on firms that exploit the city's poor."

* * *

"We are now seeing the tangible results of the program," said Sheldon Feldman, FTC trial lawyer who is in charge of the program. "It takes at least a year to investigate a case. These complaints represent a tremendous increase over the rate of complaints issue in the past."

* * *

"The consumer protection program was set up at the suggestion of Sen. Warren G. Magnuson D-Wash., chairman of the Senate Commerce Committee, who asked for a drive to develop the model program for policing those unfair and deceptive practices to which the poor are particularly susceptible."

* * *

"The program is coordinated with a number of other agencies, including the United Planning Organization's Neighborhood Legal Services project, the Better Business Bureau, the U. S. attorney's office and the Post Office and Justice Departments."

* * *

"Feldman approaches his job with fervor, as demonstrated by the increase in FTC complaints. But, he says, the number 'isn't really important.'"

Can't Sue All

"We can't sue everybody," he said. "The idea of the program is to prosecute a number of cases so that these practices can be publicly highlighted. We have no intention of ridding the metropolitan area of all deceptive practices with this program. It is simply not possible. The best protection a consumer can have is to be informed."

On July 8, 1966, two Commission attorneys, Messrs. Howard Epstein,

Esquire and Walter Gross, Esquire, called upon petitioner's place of business. (Messrs. Epstein and Gross were the same staff attorneys who handled the trial hearings of this matter.) On July 8, 1966, they asked for access to petitioner's books, records, invoices, etc., and were given complete cooperation and full access by petitioner and his employees. They spent a large part of that day in petitioner's store in going over petitioner's records. They returned for an hour or two a few days later. Within a very short period the complaint in this case had been prepared on the basis of the information obtained by those Commission attorneys on the occasion of these two visits, and the complaint had been issued.

As the Court will see for itself, the Federal Trade Commission attorneys deliberately seized upon things that were so obviously out of line that they could, and should, have suspected that there was some mistake or flaw in their "evidence". Petitioner refers, for example, to PARAGRAPH SEVEN of the complaint which contains the following language:

"For example: Transistor Radios costing respondent \$3.45 bear a retail price of, and are sold by respondent for \$59.50."

Of all the items of merchandise in petitioner's store which complaint counsel must have been shown, or would have had the opportunity to examine, these transistor radios are the only merchandise which the Commission saw fit to mention in its complaint. At the time the complaint was drawn, complaint counsel and the Commission possessed no evidence of a sale by New York Jewelry of these radios at the price of \$59.50. Nor has there ever been any such evidence for they were never sold at that price. We refer again to the Hearing Examiner's initial decision:

"Before discussing all of the allegations in this paragraph, it should be pointed out that although the complaint charges respondent with selling a transistor radio costing respondent

\$3.45 at a price of \$59.50 there is no evidence in this record to substantiate this allegation." (Initial Decision, page 7) (The emphasis on the word no is in the original, and was placed upon that word by the Hearing Examiner.)

The price tags on the radios were a mistake, and the Commission's attorneys should have known it. But the emotional and political climate, and their own zeal, had predisposed these attorneys to find 'evidence' to fit the concept of petitioner's guilt.

The Commission's discussion of the record evidence bearing on respondent's pricing practices is found at pp. 33 through 40 of the Commission's Opinion. These pages are packed with guesswork. The Commission relies upon "evidence" of the most questionable kind, and supports its claims by surmise, suggestion, and speculation. Nowhere does the Commission found its opinion on proof that will satisfy the standard-substantial evidence when the record is viewed as a whole - necessary to support a Commission decision in this matter.

We believe that some fuller discussion of the evidence than that contained in the Commission's Opinion would be appropriate here in order to point out the infirmities in the Commission's case which are not referred to in its Opinion.

This "evidence" regarding petitioner's pricing falls into four categories. The first concerns the price of eyeglasses, and consists of the testimony of Dr. Ephriam and the documentary evidence relating to the sales of eyeglasses by respondent. The second category consists of three invoices with handwritten notations of unknown origin or meaning on them. The third category consists of the testimony in evidence relating to a watch, allegedly purchased by Mr. Roland Taylor. The fourth category consists of the evidence in testimony relating to the group of small transistor radios observed in petitioner's store by complaint counsel. While the Commission has placed varying degrees of reliance

on these evidentiary items, we believe that a full discussion of this material would be proper at this point in order to place the occurrences in this proceeding in proper perspective, and to demonstrate to the Court the kinds of testimony which the Commission was willing to credit in this case.

a. The sales of eyeglasses by New York Jewelry Company

During the hearing, the Commission introduced conditional sales contracts, order blanks, eyeglass prescriptions and other documents dealing with twenty-nine transactions involving the sale by New York Jewelry of eyeglasses. The only live witness actually presented by the Commission to give testimony regarding the prices charged by others for comparable merchandise was a witness whose testimony was limited entirely to eyeglasses.

The Commission relies heavily on Dr. Ephraim and his testimony. Petitioner submits that the testimony of this one witness is totally inadequate to carry the entire burden of the Commission's attempted proof that petitioner's prices were "greatly in excess" of the prices of others. It is impossible to credit the narrowly limited testimony of this one individual as proof of the prices charged for eyeglasses in Washington. In fact, when his evidence is viewed realistically, it shows that the eyeglass prices of New York Jewelry were normal in every respect.

1. The specific price testimony

Table 3 reflects the information presently in the record relating to eyeglass sales by petitioner, and the evidence and testimony relating to the prices charged both by petitioner and by others for similar merchandise. Column 1 shows the identity of the purchaser, and column 2 shows the price charged for such eyeglasses by New York Jewelry Company. Columns 3 and 4 show the testimony of Dr. Zachary Ephraim, an optometrist,^{4/} who was called as a witness by

^{4/} Dr. Ephraim is not a medical doctor. He is not licensed or competent to

TABLE 3
Eyeglass Prices

Identity of Purchaser (1)	Price Charged by New York Jewelry (2)	Dr. Ephraim's Testimony of His Own Price (3)	Dr. Ephraim's Testimony of Prevailing Prices (4)	Dr. Witten's Testimony of His Own Price (Including Examination Fee) (5)	Dr. Ephraim's Price Plus \$10 Examination Charge (6)	Dr. Ephraim's Price Plus \$15 Examination Charge (7)	Price Shown in Col. 6 Plus \$15 Variation (8)	Price Shown in Col. 7 Plus \$15 Variation (9)	
Synithia Washington	\$59.50	None	None	None					CX 44
James Freeman	59.50	\$22.00	\$22.00	\$40.00	\$32.00	\$37.00	\$47.00	\$52.00	CX 37, 40, Tr. 243
Minnie Henry	59.50	None	22.00	None	32.00	37.00	47.00	52.00	CX 31, 34, Tr. 242
Minnie Henry (clear)	59.50	None	24.00	None	34.00	39.00	49.00	54.00	CX 31, 35, Tr. 242
Roland Taylor	59.50	28.00	28.00	None	38.00	43.00	53.00	58.00	
Roland Taylor	59.50	22.00	22.00	None	32.00	37.00	47.00	52.00	CX 21, 27, Tr. 244
Roland Taylor	59.50	22.00	22.00	None	32.00	37.00	47.00	52.00	CX 21, 28, Tr. 244
Johnnie B. Johnson	29.50	None	None	None					CX 21, 29, Tr. 244
Johnnie B. Johnson	17.50	None	None	None					CX 48
A. Stubbs	42.50	None	None	None					CX 48
Arthur Pratt	17.00	None	None	None					CX 62
Arthur Pratt	17.00	None	None	None					CX 69
John Edmunds	17.00	None	None	None					CX 66
John Edmunds	42.50	None	None	None					CX 121
John Edmunds	42.50	None	None	None					CX 121
Ellie Freshly	79.50	None	None	None					CX 121
Ellie Freshly	79.50	None	None	None					CX 74
Elsie Hall	25.00	\$ 9.00	9.00	None	19.00	24.00	34.00	39.00	CX 74
J. L. Dennard	39.95	24.00	24.00	None	34.00	39.00	49.00	54.00	CX 112, Tr. 235
D. Cavanaugh	44.50	28.00	28.00	None	38.00	43.00	53.00	58.00	CX 84, Tr. 236
Rosa Wesly	49.50	30.00	32.00	None	40.00	45.00	55.00	60.00	CX 86, Tr. 237
James L. Crowder	59.50	None	None	None					CX 89, Tr. 237-8
James L. Crowder	59.50	24.00	24.00	None	34.00	39.00	49.00	54.00	CX 91, 92, 94, Tr. 238
C. H. Logan (bifocals)	59.50	28.00	28.00	None	38.00	43.00	53.00	58.00	CX 99, Tr. 239
C. H. Logan (reading)	19.50	None	None	None					CX 101, Tr. 239
Gus Ashton	32.50	None	None	None					CX 105, Tr. 239
Etta Calloway	42.95	None	26.00	None	36.00	41.00	51.00	56.00	CX 109
Vernetta Henden	49.50	None	None	None					CX 111
Barbara Brown	44.50	None	None	None					

complaint counsel. With regard to certain pairs of eyeglasses, Dr. Ephraim gave testimony as to what his price would be, and with regard to these, and to certain other eyeglasses, Dr. Ephraim apparently gave testimony as to what the "prevailing" retail price would be in this trade area. (Tr. 234-9, 242-5) While the record exhibits some confusion as to the basis for Dr. Ephraim's testimony, and as to whether Dr. Ephraim was in fact testifying only as to his own price (Tr. 232, 266) we have, in this table, displayed both what Dr. Ephraim described as his own price, and what he described as the "prevailing" price. Dr. Ephraim's own price appears in column 3, and what he described as the "prevailing" price in column 4.

With regard to one pair of glasses, those purchased by James Freeman and identified as Commission Exhibit 40, complaint counsel also offered evidence from a second optometrist, Dr. Wendell Witten. (Tr. 488-9) His testimony was stipulated between the parties and is shown in column 5.

Column 6, 7, 8 and 9 show the effect of certain factors ignored by Dr. Ephraim in giving testimony about his own price, or about the "prevailing" price, and an explanation of these columns follows. The final column contains record references to the documents, testimony and exhibits relating to each pair of eyeglasses described in the table.

2. The necessity for including examination fees

Both ophthalmologists and optometrists examine patients for refractive errors and prescribe eyeglasses as a result of that examination. Obviously, that examination costs the patient something, and the price of the examination to the patient must be included when the patient reckons up the total cost to him

(continued) practice medicine or even to treat diseases of the eye. Dr. Ephraim, as an optometrist, is simply trained to measure for, and to prescribe, eyeglasses in order to correct refractive errors in vision. (Tr. 227, 247-48)

of eyeglasses. According to Dr. Ephriam's testimony, approximately one-half of the optometrists in Washington break down their charges to a patient and show separately the cost of the examination, the cost of the lenses, and the cost of the frame, as apparently, Dr. Ephriam does. Approximately one-half do not, but simply make a flat charge for the service of providing eyeglasses. (Tr. 230) We might point out here that New York Jewelry is in the second category, and makes a single unitary charge for eyeglasses. (Tr. 344)

At any rate, the examination fee must be included in the charge for eyeglasses whether a breakdown of charges is given to the patient or not, since the cost is the same in either case (Tr. 230).

Dr. Ephriam's testimony with regard to his own prices or "prevailing" retail prices, for the eyeglasses about which he testified did not include the examination fee. (Tr. 280-1) As a result, his testimony is quite misleading, because every customer for eyeglasses must pay for the eye examination in one way or another. And any analysis of comparable prices paid by consumers to other suppliers must take it into account.

Dr. Ephriam testified that he would have charged \$30.00 for a pair of eyeglasses sold to Rosa Wesly by New York Jewelry Company (CX89). (Tr. 237-8) Dr. Ephriam was referring to the price for the eyeglasses alone. If Rosa Wesly had in fact called upon Dr. Ephriam because her eyes were bothering her, and had obtained precisely this same pair of eyeglasses from Dr. Ephriam, the total charge made by him would have been \$40.00, not \$30.00. For Dr. Ephriam does not sell eyeglasses without first examining the patient to determine what prescription is needed (Tr. 251). To reiterate, Dr. Ephriam's price would have been \$40.00, not \$30.00. New York Jewelry's price was \$49.50 for this particular pair of eyeglasses.

Column 6 shows what Dr. Ephriam's price would be for each pair of glasses

if his \$10.00 examination fee is added to the price he testified to. In determining the charges which would have been made by Dr. Ephriam, it is simply inaccurate to look only at the charge made by him for the eyeglasses, since the charge for the examination must be included. Column 6 thus reflects, realistically, Dr. Ephriam's testimony about prices with his own examination fee added in.

It must not be supposed that all optometrists charge the same examination fee. Dr. Ephriam was asked to give us some idea of the variation or range in examination fees charged. He testified that they might be as low as \$5.00 or as high as \$25.00 per examination. (Tr. 281) The stipulated testimony of Dr. Witten, the only other witness on this subject, shows that Dr. Witten's examination fee is \$15.00. (Tr. 189) While we cannot be certain, it seems possible that Dr. Ephriam's examination fee may be somewhat lower than average. At any rate, since he testified that the range goes as high as \$25.00, and since the only other optometrist whose testimony is in the record actually charges \$15.00, we think it might be realistic to conclude that a \$15.00 examination charge is either common, or not unusual. Column 7 takes the price figures provided by Dr. Ephriam, which do not include any examination fee, and adds to them the sum of \$15.00 which is Dr. Witten's examination fee. As one can see, when the supposed "prices" testified to by Dr. Ephriam are viewed realistically, including the examination fee, the differences between them and the prices charged by New York Jewelry Company to a very great extent disappear.

One other point requires our attention. The Commission refers to respondent's offer to customers of "free eye examinations" (p. 17, Commission Opinion). The Commission then deducts a cost of \$5.00 which is the amount paid to petitioner's employed optometrist per examination from petitioner's prices.

This case does not turn on the meaning of the word "free". Petitioner

advertises and does provide free eye examinations. Many people have had their eyes examined at petitioner's premises without any charge being made. There are, in the record, stipulations reflecting the testimony of eleven individuals who were given eye examinations without charge (RX 28-38), and these are only representative of many many more such instances. Petitioner does not make any charge for such examinations, hence the claim of "free" eye examinations is an accurate one.

And the fact that petitioner does give eye examinations and makes no charge therefor in many instances, certainly does not mean that the cost of maintaining this service is not a cost factor along with all other cost factors in determining petitioner's ultimate pricing for eyeglasses. Nor does it mean that the examination charge is not a normal factor in determining the amount to be paid by a consumer when he or she buys eyeglasses.

What we are attempting to compare here is the total charge levied by other sellers of eyeglasses against the prices charged by petitioner. The prices charged by other sellers must include the charge for an examination for the consumer must pay it. An eyeglass examination is a necessary part of the service of providing eyeglasses. Its cost necessarily reflects itself in the price of the eyeglasses to the consumer regardless of where they are obtained. As Dr. Ephraim testified, the cost to the customer is the same whether the charges are stated separately, or lumped together (Tr. 230).

There is really no warrant for the Commission's action in deducting \$5.00 from petitioner's price. This \$5.00 represents the cost to petitioner for this service, not a normal charge to a customer. For example, we know that Dr. Ephraim's charge to his customers is \$10.00 per examination, and that of Dr. Whitten is \$15.00. We do not know what their cost is for their services, nor is it important to our consideration. In order to arrive at truly comparable prices, we simply add the charge for an examination to the prices testified to by Dr. Ephraim.

3. The additional variation in prices which is encountered

On direct examination, Dr. Ephraim testified with great precision regarding his own price for eyeglasses, and regarding the "prevailing" price for such eyeglasses. When pressed on cross-examination, Dr. Ephraim had to admit that variations in price would be encountered. He was asked about the variations in price which might be found with regard to two specific pair of eyeglasses: one was his own pair of eyeglasses, i. e., the pair of eyeglasses which the Doctor was wearing (Tr. 263), and the other a pair of eyeglasses purchased by Minnie Alice Henry from New York Jewelry. (Tr. 287) He testified that the variation in price with regard to his own eyeglasses could be as much as \$14.00 (Tr. 263), and that the variation in price with regard to the eyeglasses of Minnie Alice Henry might be as much as \$22.50. (Tr. 287) Again, we must surmise that these variations do not include any of the additions to price caused by the imposition of the examination fee, nor variations in price due to the range of examination fee charges encountered, because all of Dr. Ephraim's testimony on price was seemingly directed to a discussion of prices without examination fees included. We have then, testimony with regard to the variation which could be encountered in the case of two pair of eyeglasses, one a variation of \$14.00 and the other a variation of \$22.50. Furthermore, in connection with statements not directed to any particular pair of eyeglasses, he noted the possibility of much wider variations in price of, perhaps, as much as \$100.00. (Tr. 265)

Finally, the Doctor's original testimony with regard to price was directed to his usual price for the eyeglasses, or as to the usual "prevailing" price on such eyeglasses. Again, when pressed on cross-examination, the Doctor admitted that even he did not always charge his usual price and did not know whether other sellers always charged their usual price. (Tr. 257) In the light of the two specific

examples of price variations, and in the light of the other comments made by Dr. Ephriam, we think it realistic to assume that, speaking conservatively, there might be a variation of as much as \$15.00 in the prices charged by various sellers for any given pair of glasses. Columns 8 and 9 reflect the effect of this variation in the prices testified to by Dr. Ephriam.

In column 8 this \$15.00 variation has been superimposed upon and added to the total price shown in column 6, which was the retail price testified to by Dr. Ephriam plus the \$10.00 examination fee which Dr. Ephriam charges. In column 9 this \$15.00 variation has been superimposed on the prices shown in column 7, which was the retail price testified to by Dr. Ephriam, plus a \$15.00 examination fee like the fee which Dr. Witten charges. When one keeps in mind the fact that the \$15.00 variation selected for use in columns 8 and 9 is probably conservative, and that wider variations are undoubtedly encountered, it is obvious that the prices charged by New York Jewelry are in line with the prices which would be encountered in purchasing eyeglasses from other sellers in the Washington area.

4. The testimony of Dr. Ephraim cannot be relied upon as evidence of comparative prices.

Counsel for petitioner objected at the time of its introduction, to Dr. Ephraim's testimony on prevailing prices. Petitioner will admit that Dr. Ephraim knows his own prices. Petitioner objected, however, to the reception of any evidence from Dr. Ephraim regarding the prices charged by others for eyeglasses, on the ground that he could not possibly give meaningful testimony in such an area. We wish to point out in some detail the reasons for the unreliability of such testimony.

First, there are a large variety of channels through which eyeglasses reach the public: ophthalmologists, dispensing ophthalmologists, optometrists, optometrists

practicing in commercial establishments, dispensing opticians, etc.

Ophthalmologists, sometimes referred to as oculists (Tr. 421), are Doctors of Medicine, graduates of medical school, and licensed to practice medicine in the normal way. They specialize in the care and treatment of the eyes, including diseases of the eye and in the prescribing of corrective eyeglasses for refractive errors of the eye. (Tr. 247-9, 254).

Optometrists are not medical doctors, but undergo a course of training designed to qualify them to conduct examinations that measure the refractive errors of the eye. Optometrists are not licensed, and are not competent, to treat diseases of the eye. Optometrists measure for, and prescribe, eyeglasses in order to correct vision defects. (Tr. 227, 247-9).

Opticians are not, strictly speaking, professional group at all, but, rather, are skilled technicians. (Tr. 370) Opticians are not trained, licensed or permitted to treat the eye, or diseases of the eye, or even to examine for and prescribe eyeglasses. Opticians make, cut, test, grind and polish lenses, and may assemble components into finished eyeglasses. (Tr. 248-9, 270, 370) We encounter opticians, at three different commercial levels. "Dispensing" opticians are retailers who make and sell eyeglasses to members of the public according to an ophthalmologist's or optometrist's prescription which is brought to them by the customer. (Tr. 255) Wholesale opticians, also referred to as "manufacturing" opticians, sell and distribute stock lens blanks at wholesale, both to dispensing opticians and to optometrists. (Tr. 270, 273) "Manufacturing" opticians also grind and polish plain blanks of glass into the more complicated lens shapes on a service basis for optometrists and, possibly, for dispensing opticians as well. (Tr. 250-1, 255) A small number of larger companies, such as Bausch & Lomb, and American Optical, manufacture the plain lens blanks, and uncut stock lenses which are distributed through the wholesale or "manufacturing" opticians. (Tr. 273, 275)

Ophthalmologists examine eyes to determine the refractive error, and prescribe eyeglasses for their patients. Most ophthalmologists do not dispense eyeglasses, and the patients must then, after paying an examination fee to the ophthalmologist, purchase the eyeglasses corresponding to his prescription from a "dispensing optician." (Tr. 255) However, not all ophthalmologists operate in this manner. Some ophthalmologists "dispense" in their own offices. That is to say, that in addition to performing examinations, they then sell the eyeglasses to the patient as well. (Tr. 255)

Optometrists are also engaged in the business of providing eyeglasses to the public in several different fashions. Optometrists examine eyes and prescribe eyeglasses. (Tr. 227, 248) Optometrists then sell to the patient the eyeglasses which have been prescribed. (Tr. 227) Optometrists do not manufacture or make up the eyeglasses so sold, but generally forward the prescription to a wholesale or "manufacturing" optician for that purpose. (Tr. 250, 274) Somewhat more than half the optometrists in the City of Washington possess "laboratories." (Tr. 259-60) Optometrists with such laboratories would be able to make up some of their simpler prescriptions. Obviously, optometrists not possessing a laboratory must send out to a manufacturing optician to obtain all of the eyeglasses which they sell.

Some optometrists "practice" in their own offices in much the same manner as the manner in which doctors, lawyers or members of other professions "practice" their calling. The chief difference is that in this case the optometrists actually provide, or sell, the material which they are prescribing. Other optometrists are employed by essentially commercial establishments (such as the Optical Departments found in department stores). (Tr. 258, 259-60) Generally, a person after an examination by an optometrist obtains his eyeglasses from the optometrist, but he may elect not to purchase the eyeglasses from the optometrist or Optical Department, but rather to have the prescription filled by a dispensing

optician. (Tr. 252)

Dispensing opticians function primarily by selling eyeglasses to fill prescriptions obtained by patients from ophthalmologists. Opticians may, of course, fill prescriptions written by optometrists. (Tr. 252) Wholesale or "manufacturing" opticians grind and cut lenses, and make up the finished eyeglasses which are sold by Optometrists. Wholesale or "manufacturing" opticians also sell stock lenses and frames at wholesale to dispensing opticians, and may in some instances sell stock lenses to those optometrists with laboratories. (Tr. 250, 273-5).

Dr. Ephraim estimated the number of outlets, of all kinds, for eyeglasses in Washington at approximately 150. (Tr. 258) The Washington Classified Telephone Director for May 1966 contains eight solid pages of listings for optometrists and opticians. There are in the neighborhood of 150 listings under "opticians," and over 150 listings under the heading "Optometrists." Ophthalmologists, being medical doctors, are precluded by professional ethics from advertising their specialty, and so there is no way of even approximating the number of ophthalmologists prescribing or dispensing eyeglasses in Washington, although Dr. Ephriam did estimate the number at perhaps 50 (Tr. 254). We invite attention to the listings in the Washington Classified Directory to give the court some idea of the multiplicity of outlets and kinds of outlets for eyeglasses found in this city. Dr. Ephriam's testimony cannot possibly be considered a sufficiently accurate source of information to cover this broad range of outlets.

Dr. Ephriam is a member of the Optometric Society of Washington. The Society has 45 members. (Tr. 254) The record is unclear as to whether Dr. Ephriam, in his testimony about "prevailing" prices, was limiting himself to testimony about other members of the Optometric Society. But, even in that case, Dr. Ephriam's testimony cannot be accorded any great weight. On cross-examination he frankly admitted that he had visited in the offices or stores only

a handful of such optometrists (Tr. 233, 252), and that several of such visits were social calls at which prices would not even be discussed. (Tr. 253, 258) He testified that neither he, nor his colleagues in the Optometric Society, always charged what he referred to as the "usual" price. (Tr. 257).

Dr. Ephraim testified about commonly encountered variations in price. (Tr. 263, 287) Furthermore, he indicated that even larger differences in prices are found. (Tr. 265) He candidly admitted that even he does not always charge his "usual" price, nor does he know whether his colleagues always charge the "usual" price. (Tr. 257).

To sum up: in view of the very large number of outlets for eyeglasses in the City of Washington, in view of the fact that these outlets fall into several different classifications or channels of trade doing business in differing fashions, in view of the variations in price which he testified would be encountered, in view of the fact that Dr. Ephraim did not include in his price testimony any provision for the examination charge he makes, in view of the fact that according to Dr. Ephraim's testimony there is at least a \$20.00 variation in examination fees, and in view of the fact that even Dr. Ephraim doesn't always charge his own "usual" price, it is simply impossible to rely on Dr. Ephraim's testimony as indicative of eyeglass prices across the large number and broad spectrum of outlets in the City of Washington.

Petitioner would like to emphasize that the Hearing Examiner had the opportunity of examining the evidence and of observing the testimony of Dr. Ephraim firsthand. It was the Hearing Examiner's unequivocal conclusion that "Dr. Ephraim's testimony cannot be relied upon to support the claim that the prices charged by New York Jewelry Company are greatly in excess of the prices charged for eyeglasses by other sellers thereof. (Initial Decision, p. 14).

5. The way in which New York Jewelry operates distributing eyeglasses.

It might be revealing at this point to explain the method in which New York Jewelry operates in providing and selling eyeglasses to the consuming public, since New York Jewelry provides considerably more in the way of service to the average consumer than do most retail eyeglass outlets.

New York Jewelry has a salaried optometrist (Tr. 154-5, 312, 380-1, 409), who is available at all times during normal business hours. (Tr. 156) New York Jewelry maintains a large stock, both of lenses and frames (Tr. 336, 380), enabling New York Jewelry Company to provide one day service on between 63% and 82% of the eyeglasses which it sells. (Tr. 380).^{5/}

In all of the cases of such one day service, New York Jewelry is required to cut and edge the lenses, and to insert them in frames selected from the large stock of frames in order to prepare and make up the finished eyeglasses. (Tr. 379) Until the end of 1966, New York Jewelry had an optician on the payroll as a full-time salaried employee for this purpose. (Tr. 379) Since the end of 1966, Mr. Eugene Ullman, assisted by others, has been performing this optician's work (Tr. 156, 410).

Dr. Ephraim, for example, does not maintain such a large stock of lenses and frames (Tr. 250, 269). And if Dr. Ephraim's operation is representative of other optometrists, then neither do they. Dr. Ephraim provides same day service only in emergencies, (Tr. 260) and his glasses are usually delivered

^{5/} New York Jewelry sells approximately 1,370 pair of eyeglasses per year, based on Commission Exhibit 115 and the stipulation between counsel that the six months sales figure reflected can be multiplied by two to obtain annual figures. (CX 115).

According to Mr. Ullman's testimony, those eyeglasses which are sent out to a manufacturing optician (Dal Tex Optical) amount to five or ten per week, or between 250 and 500 approximately per year. This means that between one-sixth and one-third are sent out, and the remainder, or about two-thirds or five-sixths, are made up on the premises with one-day service.

anywhere from three days to a week later. (Tr. 260).

6. New York Jewelry's prices

The following Table is based on Commission Exhibit 115, which shows all prices charged by New York Jewelry for eyeglasses for a period from January through the end of June 1966, inclusive, and gives the number of pair of glasses sold at each such price. That exhibit has been condensed in the following table, and reference is made to the exhibit for full details.

NUMBER OF PAIR OF EYEGLASSES SOLD IN VARIOUS PRICE RANGES BY NEW YORK JEWELRY - JANUARY 1 - JUNE 30, 1966

Price Range	Number of Pair of Eyeglasses	Percentage of Sales in each Price Range
	42	6.1%
\$10.00 - \$19.99	77	11.3
\$20.00 - \$29.99	251	36.7
\$30.00 - \$39.99	186	27.1
\$40.00 - \$49.99	125	18.2
\$50.00 - \$59.99	0	0.0
\$60.00 - \$69.99	4	0.6
\$70.00 - \$79.99	<u>685</u>	<u>100.0%</u>
Total No. Sold		

Again, it is quite apparent that the prices charged by New York Jewelry for eyeglasses fall within the same range as the prices charged by other sellers.

Petitioner also feels impelled to point out that the twenty-eight instances of sales of eyeglasses by petitioner, regarding which the Commission submitted evidence, contain an unrepresentative sample of petitioner's eyeglass prices. The Table above shows that just a fraction over 18% of all of the eyeglasses sold by petitioner are sold at prices greater than \$50.00. Which means that more than four out of five pairs were sold at prices which were lower than this. Of the twenty-nine instances of eyeglass sales which are detailed in the record, ten of the twenty-nine represent sales at prices in the above \$50.00 range. In other words, their sample is loaded to a heavy degree with

sales at the higher prices and does not reflect the generality of prices encountered in petitioner's sales of eyeglasses.

Furthermore, as Table 3 shows, Dr. Ephraim gave supposed comparative price testimony with regard to thirteen of these twenty-nine sales transactions. Eight out of these thirteen sales transactions involved the sale by petitioner of eyeglasses in the highest price bracket. While we do not wish to attach any undue significance to this fact, we should like to point out that the sample about which Dr. Ephraim gave his supposed testimony contains an even larger proportion of sales at the higher price levels, and it is even less representative of the generality of prices encountered in petitioner's sale of eyeglasses.

7. Conclusion

It is simply impossible to rely on Dr. Ephraim's testimony to support the claim that the prices charged by New York Jewelry Company are greatly in excess of the prices charged for eyeglasses by other sellers thereof. In fact, as shown by Table 3, when Dr. Ephraim's prices have been adjusted to reflect variations which he testified about and to include the examination charge which of necessity is paid by purchasers of eyeglasses, it is apparent that the prices charged by New York Jewelry Company are well within normally encountered limits. The prices charged by New York Jewelry Company may be in some cases slightly lower, or in some cases slightly higher than those of other sellers; but in no case are they "greatly in excess" of, or "unconscionably" higher than, the prices which we might expect to find charged by other sellers of eyeglasses.

b. The Three Invoices

We turn now to a discussion of the second category of "evidence", the three

invoices taken from petitioner's files by complaint counsel during their investigation on July 8, 1966. These invoices are discussed at pages 34 37 of the Commission's Opinion.

Two of these invoices are from Bulova Watch Company (CX 58, 59) and one is from A. Cohen & Sons Corp. (CX 57) These three invoices (CX 57, 58, 59) bear handwritten notations next to the unit prices typed on the invoices. Complaint counsel claimed that the handwritten notations on these three invoices represent retail prices; and, further, complaint counsel attempted to prove, solely by means of these documents, that such so-called "retail prices" were actually charged by petitioner for the merchandise shown on the invoices:

"Mr. Epstein: . . . and Number 2, a handwritten notation on three of the five invoices, your Honor, you will note that there are retail prices that have been marked in handwriting opposite these items, and they, of course, are obviously to show the retail price of those goods directly. . . ." (Tr. 168)

Let us examine these invoices and see exactly what kind of documents they are, and what kind of "evidence" we are dealing with here. To begin with, the invoices certainly were received from the companies shown on their faces, namely, A. Cohen and Sons Corp., and the Bulova Watch Company, Inc. And the invoices certainly reflect the purchase by New York Jewelry in August of 1965, and in November of 1965, of the merchandise shown, at the cost price as shown. Thus far, they are normal commercial invoices rendered by a seller to a buyer in the normal way. But precisely there their normality halts.

Mr. Ullman stated that it was not petitioner's practice to put retail price quotations on invoices, nor had it ever been. (Tr. 387) He stated most emphatically that, although New York Jewelry had many, many invoices, he knew of none - other than these three - that had any such notations on them, and he had never seen any other invoices with such notations. (Tr. 330, 387) Even complaint

counsel conceded, on the record, that they had seen no other invoices with similar penned notations on them, even though petitioner's invoice files were opened to them completely.

"Mr. Epstein: If that is what we are driving at, that there were no more invoices that had markings on them, I am willing to stipulate to it. I am willing to stipulate that the invoices in the record that have the markings on them are the only invoices that . . . we saw in New York Jewelry Company . . . Those are the only invoices that have markings on them, . . . that the documents that are already in evidence are the only ones which Commission Counsel saw on the premises of New York Jewelry Company that had penned notations on them. . . ." (Tr. 396-7)

Petitioner has no knowledge as to what these penned notations are, or were. They could have been almost anything. Mr. Ullman did not make them (Tr. 165-6, 330, 387), nor could he identify the handwriting as Mr. Tashof's (Tr. 167, 387). He was not familiar with such notations (Tr. 387), did not know what the notations represented (Tr. 330), and had never seen any such notations before.

We can theorize all we wish about these unidentified notations. They could be exercises in arithmetic, or penmanship. They could be exercises in cost coding. They could be notations of some kind made by the bookkeeper in the course of paying the invoices, or for almost any other purpose. They could be mistakes. They could even be the result of someone's doodling. Mr. Ullman testified that almost any of the store's employees could have had access to, or come in contact with these invoices (Tr. 163, 324). Anybody could have made the notations, and for almost any purpose. Again, we reiterate that it was neither the policy nor the practice to record or note retail prices on invoices. Mr. Ullman was totally unfamiliar with such notations, and in fact had never seen any other than these three. Even complaint counsel candidly admitted that

of all the invoices they looked at or selected, ^{6/} these were the only three bearing such notations.

Mr. Ullman was asked to recite the specific prices charged for particular items of merchandise reflected on the invoices. He answered that he could not recall, at this date, the specific prices charged for items in 1965 or early 1966. (Tr. 171-2, 329-30, 331, 398) Nor should that be surprising. New York Jewelry sells many, many items, obviously at different prices.

Mr. Ullman was asked, for example, for the retail price for a certain item of merchandise, a "Craftsman AA" watch described on the invoice from the Bulova Watch Company, Inc. (CX 58, Tr. 171-2, 331-32) Mr. Ullman testified that when Bulova watches are delivered, they arrive at New York Jewelry Company in a box. On the outside of the box is noted the model name of the watch assigned by Bulova (i. e., "Craftsman AA," or "Engineer K"). Inside the box is the watch to which is attached the ticket which also gives model name of the watch. When watches are ticketed with New York Jewelry's stock ticket, the name tags and price tickets supplied by Bulova are removed. Mr. Ullman stated that for that reason he would be unable to tell a Bulova "Engineer" from a Bulova "Craftsman" and that in fact he simply could not identify one Bulova watch from another. (Tr. 331-32).

Mr. Ullman was asked if the penned notations on the invoices refreshed his recollection as to the prices charged, and his answer was that they did not. (Tr. 172, 330, 333) Furthermore, Mr. Ullman stated that he had absolutely no reason to think that the notations on the invoices actually represented retail prices. (Tr. 398).

^{6/} Although petitioner does not have an exact count, it is estimated that complaint counsel actually selected about 200 invoices for copying, and complaint counsel characterized their selection by stating: "We pulled many invoices." (Tr. 395) (Emphasis added)

Perhaps the most unusual feature of this case was the testimony of Mr. Epstein, Commission's Complaint Counsel in this proceeding. This testimony, by the Commission's prosecutor is referred to with approbation by the Commission at the bottom of page 35 of the Commission's Opinion:

"Moreover, the Complaint Counsel testified that Mr. Ullman told him during the investigation that the handwritten prices appearing on this invoice (and also on two other invoices, CX 57 and 59) represented New York Jewelry's retail selling prices for these items (Tr. 636)."

Petitioner objected strongly to the impropriety involved in placing a prosecutor on the stand to testify to the truth of the very thing he was trying to prove. Since we have no wish to impugn the good faith of complaint counsel, we can content ourselves with pointing out that Mr. Epstein's recollections, such as they were, of the supposed conversation would be hopelessly colored by his bias.

To seriously offer this completely improper and manifestly prejudiced testimony as proof of the factual proposition that the unidentified, penned notations on these three invoices were really the prices charged for merchandise by New York Jewelry, simply passes belief.

c. Roland Taylor's watch

The Commission has also seen fit to discuss Roland Taylor's watch in its attempt to bolster its claim that petitioner's prices are unconscionably high. Petitioner submits that a full exposition of the facts surrounding this watch will more than convince the Court of the extreme impropriety of the Commission's reliance upon this supposed "evidence".

This watch, and Mr. Taylor's testimony, is relied upon by the Commission in its Opinion on page 36, in footnote No. 1 on that page. The Commission states

"the watch itself could not be located, so its cost could not be clearly established." The Commission's statement on this point, while true as far as it goes, does not reveal the facts surrounding this watch or the testimony regarding it and cannot alter or diminish the extreme impropriety of referring to, or relying upon, the evidence relating to Mr. Taylor's watch.

Prior to the commencement of the hearings, complaint counsel invited counsel for petitioner to explore with them the possibility of stipulating the testimony of all or some of the witnesses which complaint counsel and/or petitioner might decide to call. In connection with that proposal, approximately three weeks before the commencement of these hearings, complaint counsel offered to counsel for petitioner stipulations covering the testimony of thirteen witnesses which complaint counsel proposed to call. Included among these were a number of witnesses who had been purchasers of merchandise from New York Jewelry (CX 3-9). After examination by both sides, these stipulations were accepted by counsel for the petitioner and the entire group was introduced into evidence by complaint counsel as Commission Exhibits 3 through 9.^{7/} One of that group of stipulations, Commission Exhibit 9, is the stipulated direct testimony of Roland Taylor. Mr. Taylor's stipulation contains the following:

"Around Christmas of 1965 I went in to New York Jewelry Company to make a payment on the eyeglasses. A man in the store showed me a watch and tried to sell it to me. I asked him how much it cost and he said \$295.00. I told him that it was too much. The salesman said it would make a gift

^{7/} Counsel for petitioner wish at this point, to make it clear that no question is being raised, either directly or by implication, about the good faith of counsel supporting the complaint in this connection. We are convinced that the stipulation of Mr. Taylor's testimony was offered by Commission counsel without any knowledge that it was false. The facts of the matter became known only later to the surprise and chagrin of complaint counsel. Petitioner has no wish or intention to call the character, reputation or good faith of complaint counsel into question. But petitioner certainly intends to comment strongly upon the competence of the evidence they have adduced.

of a lifetime for me. I had had a little too much 'Christmas Spirit' in me at the time (by 'Christmas Spirit' I mean alcoholic beverage) which led me to let the man convince me to buy the watch. Commission Exhibit 26 is the watch I purchased at that time . . . Commission Exhibit 22 is a reproduction of the contract I signed." (Emphasis supplied)

Commission Exhibit 22 is a conditional sales contract entered into by Roland Taylor and dated December 23, 1965. It shows the purchase by Roland Taylor of a new men's Bulova watch for \$295.00.

The stipulation (CX 9) and the contract (CX 22) were both offered and received in evidence. Roland Taylor's watch was marked for identification as Commission Exhibit 26. Because Mr. Taylor had asked for the return of his watch, it was not offered in evidence by complaint counsel, but instead, three close-up photographs of it were marked as Commission Exhibit 26A, B, and C, and were offered and received in evidence.

Complaint counsel had the watch (Commission Exhibit 26), which was identified by Roland Taylor in his stipulation (CX 9), examined and appraised by Mr. Lawrence Codraro, an officer of the Bulova Watch Company. Mr. Codraro's testimony is as follows"

"I have examined Commission's Exhibit 26 which is a Bulova Watch Company, Inc.'s men's self-winding watch bearing Case No. C547739 on the outside back of the watch case, which also bears the letter "W" scratched into the outside back. The watch is a 10 karat rolled gold plate in white and of 1957 manufacture. The movement is a Bulova 17-jewel Swiss movement, also manufactured in 1957. The Bulova Watch Company, Inc., assigned the trademark 'Ambassador' to this watch and the preticketed fair trade retail price of \$71.50. Markings on the inside of the watch case back indicate that the watch has been in for repair more than once." (CX 12)

Complaint counsel also exhibited this watch to a local retail jeweler who deals in Bulova watches and had him inspect and appraise the watch. His stipulated testimony is as follows:

"My name is Myer Finegold. I am manager and owner of Michael's Jewelers, 1001 Pennsylvania Avenue, N. W. I have appraised commission exhibit No. 26. It is a ten carat rolled gold-plate in white, Bulova square automatic, 17 jewel movement. It sold for around \$71.50, new." (CX 13)

The purpose of these appraisals, and the resulting testimony of Messrs. Codraro and Finegold was obviously an attempt on the part of Commission counsel to establish a comparative retail price for the watch in their possession, which they believed had been sold by New York Jewelry for \$295.00.

Approximately three weeks or so before the start of the hearings, the watch in question (Commission Exhibit 26) together with several pair of eyeglasses (CX 34, 35, and 40), was exhibited to the manager of New York Jewelry Company for his inspection. The inspection was performed at the offices of petitioner's counsel, in connection with the request by complaint counsel that petitioner admit the authenticity of these articles. As a result of that examination, petitioner admitted the authenticity of the eyeglasses, and admitted that they had been purchased at petitioner's place of business. But at that time, three weeks before the start of hearings, after inspecting the watch, petitioner refused to admit the authenticity of the watch allegedly purchased by Roland Taylor, and refused to admit that it had been purchased by Mr. Taylor at New York Jewelry Company. (Tr. 125, 507, 518-20).

The simple fact of the matter is that the watch which was given to complaint counsel by Mr. Taylor, and which was exhibited by complaint counsel to Messrs. Codraro and Finegold, and which subsequently was brought to the hearing room and marked for identification as an exhibit in this case (Commission Exhibit 26), was not the watch which was purchased by Roland Taylor at the New York Jewelry Company on December 23, 1965 for \$295.00.

Because of suspicions raised about Commission Exhibit 26, Mr. Taylor was

called as a witness and examined and cross-examined about the watch marked for identification as Commission Exhibit 26, and about its history. When Mr. Taylor was called to the stand, he reversed the story which he had given in his stipulated testimony.

He stated that he had bought a watch from New York Jewelry on December 23, 1965. (Tr. 577) He further stated that he had retained possession of that watch for sometime, but that later he had pawned the watch in March of 1966 at Weinstein's Pawnbrokers. (Tr. 580, 584) He then said that at some time subsequent to that, he had sent his wife to Weinstein's Pawnbrokers to redeem and obtain the return of the watch, but his wife brought back a different watch. (Tr. 580) The watch which his wife had obtained at Weinstein's Pawnbrokers was not the watch which he had purchased at New York Jewelry Company and allegedly pawned. (Tr. 575-6) The watch turned over to complaint counsel, and subsequently marked as Commission Exhibit 26, was the watch which his wife had purchased at Weinstein's, and not the watch which he had purchased at New York Jewelry Company. (Tr. 575) The watch identified on the record as Commission Exhibit 26 was not purchased at New York Jewelry Company. (Tr. 575-6, 575-589).

It might be difficult to credit either version of Mr. Taylor's testimony, (the stipulated one or testimony delivered in person), in view of the contradictions between them, were it not for the existence of certain items of extrinsic evidence which are absolutely persuasive of the truth of Mr. Taylor's "in person" testimony.

The first is that the watch was exceptionally dirty, the case was badly scratched, and the plating on the corners of the case was worn almost to the vanishing point, all of which would have been very unusual in the case of a watch

purchased new less than a year and a half previously. (Tr. 519; see also the photographs of the watch CX 26B and 26C).

Even more compelling as evidence are certain reports obtained from the files of the Metropolitan Police Department.

All purchasers of secondhand goods in the District of Columbia are required, by law, to file daily reports with the Pawnshop Detail of the Metropolitan Police Department. These reports must describe all secondhand merchandise purchased, the amount paid for such secondhand merchandise, and the identity of the party from whom the secondhand dealer made the purchase. A copy of a report entitled "Junk or Secondhand Dealers Return to the Metropolitan Police Department, Washington, D. C." consisting of five pages, numbered B65516, B65518, B65520, B65523, and B65524, was marked and introduced in evidence as respondent's Exhibit 39A through E. This report was filed on July 22, 1965, as evidenced by the date thereon, by Karl Margolies, 313 H Street, N. W., Washington, D. C. (Mr. Margolies trades under the name Weinstein's Pawnbrokers" at 313 H Street, N. W.)

The third page of this report (RX 39C) shows, as item no. 371, the purchase by Weinstein's Pawnbrokers on July 22, 1965, of the watch subsequently marked for identification as Commission Exhibit 26. This watch was purchased by Weinstein's Pawnbrokers on that day as part of a wholesale lot of used watches and other merchandise bought for \$440.00 from Walbrook Loan Office in Baltimore, Maryland. (RX 39E) Item no. 371 can be identified as being the same watch marked for identification as Commission Exhibit 26, by virtue of its description - "Men's W.G. Wrist, 17 Jewels, 'Bulova' self-winding St. Case, St. St. Stretchband." - and the watch case number - "C547739." (RX 39C, Tr. 528-29, refer also to the photograph of the watch case back which clearly shows the watch case number, CX 26B.)

It is clearly established by this report that the watch in question, identified as Commission Exhibit 26, was purchased by Weinstein's Pawnbrokers from a wholesaler in Baltimore in July of 1965.

This evidence, coupled with Mr. Taylor's own assertion that the watch was bought by his wife at Weinstein's Pawnbrokers is absolutely compelling. The watch marked for identification as Commission Exhibit 26 and examined and appraised by Messrs. Codraro and Finegold was not the watch purchased by Roland Taylor from New York Jewelry Company. The watch marked for identification as Commission's Exhibit 26 never belonged to New York Jewelry Company and was never sold by New York Jewelry Company to anyone.

The evidence is so compelling that even complaint counsel have conceded on the record that the watch marked as Commission Exhibit 26 was not the watch which Roland Taylor purchased from New York Jewelry Company. (Tr. 530, 532, 533, 534).

The Commission now takes the position that it is a matter of no importance if they produced the wrong watch. They claim that Roland Taylor's testimony proves that the watch he did purchase at New York Jewelry Company was not a valuable watch. They refer us to the transcript of his testimony wherein Mr. Taylor discusses his pawning of the watch bought from petitioner. Mr. Taylor claims that Weinstein's told him the watch was worth no more than \$10.00. (Tr. 584) And the Commission offers this in support of the proposition that the original watch was priced at an "unconscionably high" price by New York Jewelry when it was sold to Mr. Taylor.

This testimony is, of course, hearsay, and hearsay of the most unreliable kind. But petitioner does not have to emphasize the technical objection. We think it is self-evident to anyone knowledgeable to the ways of trade, that pawnbrokers buy cheap and sell high. Since they buy just as cheaply as they can, any statement

about the worth or value of an article made by a pawnbroker to a prospective seller certainly cannot be relied on. Statements made to Mr. Taylor about the value of his watch while he was engaged in pawning it are simply worthless as proof of the value of the watch. Nor can they possibly support the contention that New York Jewelry's price for this watch was "greatly in excess" of the price which any other seller would have charged.

Neither Mr. Taylor, nor any statements which he made can be trusted in the slightest in the light of what happened. First, Mr. Taylor gave one version of his testimony to complaint counsel, the version which was embodied in the stipulation prepared by complaint counsel and offered in evidence as Commission Exhibit 9. Then, when he appeared on the stand, Mr. Taylor flatly reversed his previous testimony and admitted that the watch in question had not been purchased at New York Jewelry Company. The hearing examiner had the opportunity to listen to the testimony and observe Mr. Taylor's demeanor. Charitably, we think, the Hearing Examiner confined himself to the following comment:

"Aside from that, complaint counsel has seen fit to attempt to offer comparable price evidence in the case of only one item of merchandise. That one item of merchandise is a watch belonging to Mr. Roland Taylor (CX 9, 26A, B, C). Complaint Counsel made no effort to check the history of the watch offered in evidence. Respondent's counsel, however, made a complete investigation and it was determined that the watch offered in evidence had not been sold by respondent, but that the watch had been purchased by Mr. Taylor's wife from Weinstein's Pawnbrokers, Washington, D. C." (Initial Decision, p. 8)

The Commission cannot possibly support the contention that New York Jewelry's prices are "greatly in excess" of the prices charged for like or similar merchandise of other sellers by means of Mr. Taylor's testimony. The claim that the production of the wrong watch is excusable, because of the unreliable Mr. Taylor's hearsay recital of a pawnbroker's comment is a claim that can

best be dismissed by simply stating that it has no merit.

And yet, in another mistaken effort to rehabilitate the supposed "evidence" regarding Mr. Taylor's watch, we find that the Commission's Opinion states that:

"Moreover the invoices in the record showing respondent's purchase of 77 Bulova watches over a five-month period (November 1965 to April 1966) reveal that the highest price paid by respondent for any Bulova watch which it had purchased in this period was \$39.95 suggesting that the \$295.00 Bulova watch represented a probable mark-up of around 700%." (Commission's Opinion p. 36, fn. 1)

This is speculation of the rankest sort. The Commission is jumping to the conclusion, absent even a shred of evidence, that the watch in question was one of those whose purchase was covered by the invoices referred to. May we point out that the watch was purchased in December of 1965 while the invoices the Commission refers to are dated from November 1965 to April 1966. (CX 58, RX 1-10) Ten of the eleven invoices the Commission refers to show wholesale purchases by New York Jewelry which occurred after the date on which the watch was sold!

Perhaps this one item in the Commission's Opinion will demonstrate to this Court the Commission's willingness to substitute guesswork for evidence in this proceeding.

Perhaps most important is the light that this situation throws on the manner in which this case was handled from the outset. It appears as if petitioner was prejudged as guilty before the investigation began. Complaint counsel seized gladly on a piece of seeming evidence such as Commission Exhibit 26 when, instead, the very great disparity should have put them on notice that there was some fatal flaw in this "evidence".

d. The sales of transistor radios by New York Jewelry

The Commission has also seen fit to refer to the "Mastertone" transistor radios which are mentioned in the complaint. (Commission's Opinion, p. 38, fn. 1.) The Commission specifically refrains from making any findings on the question of the price at which these transistor radios were sold ". . . since in our view a resolution of this factual issue was not material to our findings in this case." While the Commission refrained from making a specific finding, the issue was discussed in its Opinion, and petitioner submits, judging from the tenor of the Commission's remarks on this topic, that the evidence pertaining to these transistor radios was relied upon by the Commission in reaching its decision. At the very least, it played a part in influencing the minds of the members of the Commission. Petitioner therefore feels it is appropriate to discuss these radios, and the evidence surrounding them in some detail.

Table 4, below, shows the prices actually charged for these radios by New York Jewelry Company, and the comparative price of other sellers as shown by the evidence offered by complaint counsel. This evidence consists of the stipulated testimony of Mr. Gildersleeve, an official of the Biddle Purchasing Company, the supplier of the Mastertone radios to New York Jewelry, and the stipulated testimony of Mr. Friedman, whose company is engaged in selling these Mastertone transistor radios at retail in the Washington area. The price levels testified to by Mr. Gildersleeve and Mr. Friedman appear in columns 3 and 4. Column 2 shows the price at which petitioner sold these Mastertone transistor radios. The transactions involving the sale of these radios are reflected by cash sale slips (RX 43-63, 65 74), and the testimony of Mr. Ullman identifying and explaining these cash sale slips (Tr. 544 - Tr. 596). Obviously, the prices charged by petitioner for those transistor radios do not "greatly exceed" the prices being charged by other sellers, and are, in fact, for the most part lower.

TABLE 4

Transistor Radios	New York Jewelry's Price	Gildersleeve (CX9)	Frideman (CX 10)
1. Six-transistor radio	\$2.88	\$3.50 - \$5.00	\$4.99
2. Eight-transistor radio	3.88	4.00 - 6.00	-
3. Ten-transistor radio	4.88	7.00 - 9.00	7.99
4. Sales wherein the number of transistors was impossible to determine	\$3.95 - \$8.19		

It might be well at this point to pass to a broader discussion of these transistor radios and their role in the complaint and in this case. In connection with its charge of unconscionably high pricing, the complaint makes specific reference to these transistor radios:

"Respondent sells merchandise . . . at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash (for example: transistor radios costing respondent \$3.45 bear a retail price of, and are sold by respondent for \$59.50)." (PARAGRAPH SEVEN, Section 2) (Emphasis supplied)

This is the only example of "unconscionably high" pricing which is specifically mentioned in the complaint. Presumably, it had its origin in the Commission's investigation, which preceded the complaint's issuance. On July 8, 1966, complaint counsel visited the premises of New York Jewelry Company. At that time, in the course of obtaining information from New York Jewelry, complaint counsel found or noticed seven of these small transistor radios, placed in a display case located behind a counter in petitioner's premises, bearing small price tags marked "\$59.50." (Tr. 544, 595) These transistor radios were shown to complaint counsel and the invoice covering their purchase was produced and surrendered to the Commission. (CX 122, Tr. 350-53, Tr. 544).

Without making any further efforts to investigate the facts or ascertain the

truth, there was drafted into the complaint the charge that "transistor radios costing petitioner \$3.45 bear a retail price of, and are sold by petitioner for \$59.50." The truth of the matter, as is readily demonstrated, is that this charge is unfounded and erroneous. Because of the importance of this allegation, and because of its place of prominence in the complaint, exhaustive efforts were made by the petitioner to determine the exact disposition of all of these transistor radios. The facts clearly demonstrate none of these radios were ever sold for \$59.50, but rather, that all were sold at retail prices similar to retail prices of other sellers as evidenced in the record. The Commission had not one single shred of proof that any of these radios had been retailed for \$59.50, and, yet, despite this lack of proof, this charge was included in the complaint.

The radios referred to in the complaint, can be clearly identified as part of a shipment of radios sold to petitioner by the Biddle Purchasing Company of New York and invoiced on June 2, 1966. (CX 122, Tr. 544, 350-3) The shipment consisted of three cases of radios, one case containing 24 six-transistor radios, one case containing 24 eight-transistor radios and one case containing 24 ten-transistor radios. (CX 122) These radios were delivered to petitioner on June 6, 1966, as evidenced by a receipted freight bill from Halls Transfer and a check reflecting the payment of C. O. D. freight charges which is dated June the 6th. (RX 40, 41, Tr. 545).

The stipulation of Mr. Gildersleeve of Biddle Purchasing Company further identifies the transaction whereby petitioner obtained these radios:

"Among the merchandise [Biddle Purchasing] has sold to retail accounts are 6, 8, and 10-transistor radios imported from Japan, bearing the trade name 'Mastertone'; and one of the accounts that [Biddle Purchasing] sold these transistor radios to is New York Jewelry Company, 719 7th Street, N. W., Washington, D. C. Commission Exhibit 122, which is an invoice, number 32793, dated 6/2/66, represents the shipment of 6, 8, and 10-transistor 'Mastertone' radios from the Biddle Purchasing Company to New York Jewelry Company." (CX 10)

These Mastertone radios had been purchased by New York Jewelry with a view towards using them as sale merchandise in order to stimulate traffic. (Tr. 546) The radios were received on June 6, 1966, which was a Monday. An advertisement was placed in The Washington Daily News, to run on Friday, June 10th, advertising the six-transistor Mastertone radio at a sale price of \$2.88. (RX 42, Tr. 546) Although the advertisement showed only the sale price of the six-transistor radio (as being \$2.88), the eight-transistor radios were to be priced at \$3.88 during the sale, and the ten-transistor radio at \$4.88 (Tr. 547).

At the time of the purchase of the 72 radios from Biddie Purchasing Company, petitioner did not have in stock any other small transistor radios. None had been in stock for at least a month prior to June 6, 1966. (Tr. 556) Petitioner has not purchased any other small transistor radios from June 6, 1966 up to and until the date of the hearing, March 20 through 24, 1967. (Tr. 567).

The Mastertone transistor radios were placed on sale on Saturday, June 11, and the sale was continued on Monday, June 13, 1966. (Tr. 562-3) On Saturday, 7 Mastertone radios were sold: 6 six-transistor radios at a price of \$2.88 each, and 1 ten-transistor radio at a price of \$4.88. On Monday, June 13, 8 Mastertone radios were sold: 5 six-transistor radios at \$2.88, 1 eight-transistor radio at \$3.88, and 2 ten-transistor radios at \$4.88 each. This is reflected by the cash sale slips for June 11 and June 13, showing these sales. (RX 44-58, Tr. 551-566).

On June 9, just prior to the start of the sale referred to above, and one day before the advertisement was run in the Daily News, one Mastertone radio was sold as shown by a cash sale slip for that date. (RX 43) Between the time of the receipt of the merchandise on June 6, and the day when the sale started, Saturday, June 11, these transistor radios were priced at \$5.95. Judging from the date on the cash sale slip and the price it shows, Mr. Ullman was able to identify the transaction as the sale of a Mastertone transistor radio. (Tr. 551).

TABLE 5
TABULATION DEALING WITH
SALES OF TRANSISTOR RADIOS

Date	Price	Tax	Total	Number of Transistors				Un- known	Notation On Cash Slip
				6	8	10			
June 9	5.95	.18	6.13					1	
June 11	4.88	.15	5.03			1			Radio
June 11	2.88	.09	2.97	1					6 Trans. Radio
June 11	2.88	.09	2.97	1					6 Trans. Radio
June 11	2.88	.09	2.97	1					Radio
June 11	2.88	.09	2.97	1					
June 11	2.88	.09	2.97	1					6 Trans.
June 11	2.88	.09	2.97	1					Radio
June 11	2.88	.09	2.97	1					10 Trans. Radio
June 13	4.88	.15	5.03			1			
June 12	2.88	.09	2.97	1					
June 13	4.88	.12	5.00			1			Radio
June 13	2.88	.09	2.97	1					
June 13	2.88	.09	2.97	1					
June 13	2.88	.09	2.97	1					Radio
June 13	3.88	.12	4.00		1				Radio
June 13	2.88	.09	2.97	1					Radio
June 20	[5.95]*	[.18]	6.13					1	Transistors
June 20	[17.28]	[.57]	17.85	6 [at 2.88 ea.]				1	Transistors
June 24			8.19					1	Cash sale Radio
July 13			6.00					1	1 Radio & other
July 19	8.00	.24	8.24					1	Article
July 15	5.95	.18	6.13					1	Transistor Radio
July 21 Sold to Congressional Distributors					16	15		1	1 Radio
September 7	5.95	.18	6.13					1	Trans. Radio
September 7	3.95	.12	4.07					1	Radio
October 29 Three Stolen—Claim made Oct. 31, 1966								3	
November 12	2.88	.08	2.96	1					6 Trans. Radio
November 17	4.88	.15	5.03			1			One Ten Transistor
									Radio
November 25	3.88	.12	4.00		1				Radio
November 25	2.88	.09	2.97	1					Transistor Radio
December 9	4.88	.15	5.03				1		One Ten Transistor
February 20	1.03	.03	1.00					1	Transistor one only
February 22	4.88	.15	5.03				1		1 Radio
Left in Stock					1	1			
Total				19	19	22	12	72	[Total Number Purchased]

* Figures in brackets represent computations which do not appear on the cash sale slips but which are supplied for the sake of clarity.

We might point out here that according to the normal practice of New York Jewelry Company, cash sale transactions are accompanied by a "cash slip" or "cash sale ticket." (Tr. 547-49) The sales person making the sale is supposed to make a handwritten notation of the identity of the merchandise being sold, the cash price and the tax on such cash sale slips (Tr. 548), but occasionally the sales person forgets to do so. (Tr. 548) Out of 31 cash sale slips involved here, a notation describing the merchandise (i. e., "radio" "trans. radio," "transistor" or the like) is present on all but five of the slips. These five slips are for transactions occurring on June 9, June 11 and June 13. And, in each of these cases, it is possible to identify the transaction as the sale of a Mastertone transistor radio solely from the price and date. (Tr. 555; see also 547-550, 552-4, 565).

This can be done because the radios had been received on June 6, 1966. The advertisement had run on Friday, June 10, 1966, and there were a large number of other sales of the radios at those prices on Saturday, June 11, 1966, and Monday, June 13, 1966. (See Table 5, which was introduced into evidence as RX 82, and which shows the disposition of each of the radios purchased).

Subsequently, on June 20, after the sale was over, one radio was sold at a price of \$5.95 (RX 59, Tr. 566) and on the same day a group of 6 six-transistor radios were sold at a price of \$2.88 each, plus tax. (RX 60) Despite the fact that the sale was at this time over, it was Mr. Ullman's opinion that the sale price of \$2.88 had been charged in this transaction because the purchaser had taken six of the radios at one time (Tr. 568), and these radios had not sold well. (Tr. 569).

Thereafter, on June 24, July 13, July 19 and July 15, four more of these small transistor radios were sold as evidenced by cash sale slips for those dates. (RX 61, 62, 63, 65, Tr. 569-572) Again, Mr. Ullman was able to identify these

transactions as the sale of a Mastertone transistor radio because of the legend on the cash sales slips ("cash sale radio" (CX 61), "radio" plus other merchandise (CX 62, "transistor radio" (CX 63), "one radio" (CX 65)) and the price level charged for these radios, and, most important, from the fact there were no other transistor radios in stock which would have sold at this price level. (Tr. 567; 560; 563-565).

On July 21st, 31 Mastertone transistor radios, consisting of 16 eight-transistor radios and 15 ten-transistor radios were sold to Congressional Distributors, a company owned and operated by the petitioner's son, Joseph Tashof.^{8/} Mr. Joseph Tashof is engaged in a wholesale distribution of premiums such as inexpensive radios, watches, costume jewelry, ball point pens, and the like, to premium users. Such premium users employ such merchandise as rewards in order to increase sale performance.

For example, Mr. Joseph Tashof supplies a newspaper which uses the items purchased from him to reward the newspaper carrier boys for increasing sales on their routes, etc. (Tr. 616).

Mr. Tashof purchased these Mastertone transistor radios from New York Jewelry Company for sale and distribution in his own business. (RX 64, Tr. 618) He resold these Mastertone transistor radios during the course of the next two weeks or so. Six Mastertone eight-transistor radios were sold and shipped to Piggly Wiggly Corporation to complete the filling of an order for 24 transistor

^{8/} Joseph Tashof's company, Congressional Distributors, is not connected with New York Jewelry Company. Mr. Joseph Tashof does not have an interest in New York Jewelry Company, nor does petitioner, Mr. Leon Tashof, have an interest in his son's business. According to Mr. Joseph Tashof's testimony, he buys merchandise from, or sells merchandise to, New York Jewelry "very seldom, but on some occasions." His place of business is located on the second floor of 719-7th Street, N.W., the same building as New York Jewelry Company. There is no other business connection between the two companies, and there is absolutely no ownership connection between them.

radios ordered for a shipment to a company convention in St. Louis, Mo. (RX 75, Tr. 619-20) The 15 ten-transistor radios were sold on July 25 to Schambeau's Foodland in Alabama. (RX 79, Tr. 619) The remaining 10 eight transistor radios were sold on August 2nd, August 3rd, and August 5th as shown by invoices from Tash Industries, Inc., contained in the record. (RX 76, 77, 78, Tr. 619, 621).^{9/}

Thereafter, two more Mastertone transistor radios were sold on September 7 by New York Jewelry Company, as reflected by cash sale tickets. (RX 66, 67, Tr. 572-3) On October 30, three Mastertone transistor radios were stolen from New York Jewelry during the course of a burglary. Other merchandise, including television sets, record players, and watches were also taken. The three Mastertone transistor radios taken were located in a wall display case towards the front of the store. The rest of the radios were in storage in the back of the store. (Tr. 593, 594) This burglary was reported both to the Metropolitan Police Department and to the insurance company carrying New York Jewelry's theft and burglary insurance. (Tr. 622-4).

After that, between November 12 and February 22, 1967, seven more Mastertone radios were sold as reflected on cash sale slips. (RX 68-74) At this point, the prices on these Mastertone transistor radios had again been lowered to \$2.88, \$3.88 and \$4.88 for six-, eight- and ten-transistor radios respectively. (Tr. 573) And, again, these transactions, and the ones on September 7, 1966, can be identified with certainty as the sale of Mastertone transistor radios because of the notations on the cash sale tickets, because of the price at which the merchandise was sold, and because of the fact that during this entire time period, petitioner had

^{9/} Mr. Joseph Tashof operates his business under two names, Congressional Distributors for purchasing, and Tash Industries, Inc., for sales (Tr. 617).

in stock no other small transistor radios. At the time of the hearing, March 24, 1967, two Mastertone transistor radios remained in stock at petitioner's store. These two transistor radios were marked for identification as respondent's Exhibits 83 and 84 (Tr. 595), but were not offered in evidence since they remain part of petitioner's stock in trade.

In summation, then, 72 radios were bought from Biddle Purchasing Company on June 2, 1966. Thirty-six were sold at retail at prices from \$2.88 to \$8.19, 31 had been sold to Congressional Distributors, three were stolen and two remain in stock. None were ever sold for \$59.50.

Complaint counsel objected to the form of the exhibits supplying the proof that all of the Mastertone transistor radios were sold at prices well within the normally encountered range. New York Jewelry does not buy or use printed books of cash sale slips. Instead, in the interests of economy, petitioner employs rectangular slips of paper purchased from a local printer. There is nothing unusual or exceptional in this practice, and the fact of the matter is that all cash sales slips at New York Jewelry are prepared on such rectangular slips of printer's scrap.

We invite the Court to examine these exhibits (RX 43 through 74), and we further invite attention to those portions of the record where the procedure used in handling such cash sales slips is described (Tr. 547-9, 552-4, 565-6, 599-601 and 613).

We might also point out that copies of all of the cash sales slips and invoices relating to the transistor radios were furnished to complaint counsel one week in advance of the hearing. And at that time, by letter dated March 14, 1967, we offered to turn over for inspection by complaint counsel, all of the papers and records associated with these cash sales slips, including the original cash register tapes for all of the days in question, and any other cash or bank deposit records for those days which could be conveniently obtained. Complaint counsel did not

request the production or inspection of any of these associated or back-up documents.

We note that there is nothing unusual in Mr. Ullman's ability to identify and verify each and every transaction involving a Mastertone radio. Petitioner knew that the complaint was in error in charging that these radios were sold at \$59.50. By placing this allegation in the complaint, complaint counsel had, in the most emphatic manner, raised the question of the prices at which these Mastertone transistor radios were sold. Since these radios had been spotlighted so squarely in the complaint, much time was expended by petitioner in going through records in order to trace these transactions (Tr. 612) and in order to identify the exact disposition of all of the Mastertone radios bought from Biddle Purchasing Company. Assuredly, Mr. Ullman could not have testified from memory as to the precise fate of each and every one of these radios. He was enabled to do so only as the result of a painstaking search of petitioner's records, and, as a result of the segregating of all documents dealing with this shipment of radios.

There is no question that on or about July 8, after the conclusion of the initial sale of the radios which occurred on June 11 and 13, seven Mastertone radios were in a glass case behind a counter in petitioner's store, bearing price tags of \$59.50. (Tr. 595) After the initial sale of the radios had been concluded, the price of the radios had reverted to \$5.95. This can be demonstrated by the cash slips for June 20, July 15 and September 7 (CX 59, 65, 66), which show sales of these radios at the \$5.95 price. Since the regular price of the radios was supposed to be \$5.95, the most likely explanation for the "\$59.50" price tag, is that the clerk who prepared and affixed the price tags, misunderstood directions, or misplaced a decimal point. (Tr. 596).

At any rate, it should be abundantly clear, none of the Mastertone transistor radios purchased by petitioner on June 2, 1966 from the Biddle Purchasing Company

were ever sold at \$59.50. Quite the opposite, all of them that were sold to New York Jewelry's retail customers were sold at prices similar to prices charged by others selling such merchandise.

We again refer the Court to the Hearing Examiner's initial decision:

"Before discussing all of the allegations in this paragraph, it should be pointed out that although the complaint charges respondent with selling a transistor radio costing respondent \$3.45 at a price of \$59.50, there is no evidence in the record to substantiate this allegation." (Initial Decision, p. 7) (The emphasis is the Hearing Examiner's)

Petitioner submits that the entire question of these radios, and the way in which they were treated in the complaint, is highly indicative of the manner in which this proceeding has been handled by the Commission from start to finish. An absolutely groundless charge (i. e. that petitioner sold radios costing \$3.25 for \$59.50) was included in the complaint.

At the time that the complaint was drawn, complaint counsel possessed no evidence of a sale by New York Jewelry Company of such merchandise at the price of \$59.50. Nor has there ever been any such evidence. Despite this, the allegation of such sales was incorporated in the complaint.

violation of an order of the Federal Trade Commission is subject to such severe criminal penalties. Furthermore, petitioner objects because this portion of the order would impose an excessive burden upon the petitioner.

Petitioner lodges the further objection that this portion of paragraph 2 of the order is unclear in that it refers to "a statistically significant survey", and petitioner finds it impossible to know what the Commission considers to be a "statistically significant" survey. In order to be enforceable, Commission orders must point out with particularity what must be done in order to comply with their terms. The phrase "a statistically significant" survey obviously leads us into an area of subjective interpretation, and does not set forth the Commission's standard of compliance with the degree of particularity necessary in a Federal Trade Commission order.

For it is well settled that Commission orders must not be vague or imprecise:

"The severity of possible penalties prescribed by the amendments for violations of orders which have become final underlines the necessity for fashioning orders which are, at the outset, sufficiently clear and precise to avoid raising serious questions as to their meaning and application." FTC v. Henry Broch & Co., 368 U.S. 360, 82 S. Ct., 431. See also Mary Carter Paint Company v. FTC, 333 F.2d 654; Milk & Ice Cream Can Institute, et al. v. FTC, 152 F.2d 478; Ashville Tobacco Board of Trade, Inc. v. FTC, 294 F.2d 619; and Giant Food, Inc. v. FTC 307 F.2d 184.

We turn now to paragraph 3 of the order which requires petitioner to cease and desist from:

"representing directly or by implication that respondent's terms of credit are lenient, including but not limited to the representations that respondent offers 'easy credit' or that potential customers have a 'preferred' credit rating."

Petitioner has pointed out above, that the issue of leniency, or lack thereof in petitioner's dealings with his customers was not raised in the complaint, or

during the trial, and has been injected by the Commission only at this late stage in the proceedings. Petitioner was not afforded any opportunity to defend against this charge. Petitioner further submits that the manner in which the Commission has raised this issue was improper in the light of this Court's recent holding in Rodale Press v. FTC (supra), and that this paragraph of the order is unsupported by any substantial evidence in the record. Paragraph 3 of the order should be set aside.

Petitioner raises the further objection to this paragraph 3 of the order, that it is vague and imprecise in that petitioner does not know, and has no reasonable way of finding out, what representations the Commission would conclude were "lenient", and which were not.

Petitioner objects to paragraphs 4, 5 and 6 of the order on the grounds that the Commission does not have authority under the Federal Trade Commission Act to issue or enforce any such requirements for the affirmative disclosure of credit terms.

Petitioner further objects on the grounds that all requirements for the affirmative disclosure of retail credit terms are set forth and spelled out in the greatest of detail in the "Truth-in-Lending" Act, and in Regulation Z promulgated thereunder, and to the extent that the requirements of paragraph 4, 5 and 6 of the order exceed or conflict with the requirements of the "Truth-in-Lending" Act or Regulation Z thereunder, then paragraphs 4, 5 and 6 of the order are invalid.

The Commission's jurisdiction over the disclosure of credit terms under the FTC Act, was based on the prevention of misrepresentations. All litigated Commission cases requiring credit terms disclosure have charged and proved that the terms were misrepresented. The Commission never possessed under the FTC Act the power to require detailed, affirmative credit terms disclosure.

Whatever power the Commission may today possess over affirmative credit disclosure, absent misrepresentation, comes to it as a result of the "Truth-in-Lending" Act, and therefore the Commission cannot order affirmative disclosure of credit terms in any fashion which exceeds or conflicts with the disclosure requirements specified in the "Truth-in-Lending" Act.

The Commission is well aware of this question regarding its power under the FTC Act to require affirmative credit disclosure. The Commission's Opinion alludes to the situation on page 49:

"The Consumer Credit Protection Act does not, of course, in any way preempt the Commission's jurisdiction over deceptive acts and practices The purpose of that law is 'to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.' (Section 103) Our jurisdiction on the other hand stems from unfairness and deception and has traditionally extended to credit practices as well as all other types of sales and promotion practices which are unfair or deceptive."

The key point here is that the complaint does not allege that petitioner was guilty of any deception in this regard, nor that petitioner misrepresented any of its credit terms. The complaint, and the evidence in the case, concern petitioner's failure to disclose, in the detail now required by the "Truth-in-Lending" Act, all of the various parameters involved in credit transactions.

The complaint alleges no misrepresentation:

"In making sales on credit respondent fails to adequately and fully inform his customers of the credit charges or financing fees imposed upon them by respondent and in many instances respondent fails to disclose on conditional sales contracts or other credit instruments, the total price to be paid pursuant to the credit contract." (Paragraph SEVEN of the complaint).

Petitioner should like to call the Court's attention to the fact that the requirements of paragraphs 4 and 5 of the order are substantially the same as those

of § 144 of the "Truth-in-Lending" Act. The chief difference between paragraphs 4 and 5 of the order and the requirements of § 144, is paragraph 4 (b) of the order which requires a disclosure of the "time price" etc. The disclosure of this information is not required by the "Truth-in-Lending" Act. Petitioner submits that the Commission has no power or authority under the Federal Trade Commission Act to require it herein; and that since the framers of the "Truth-in-Lending" Act have not seen fit to require it, its disclosure is not necessary to the public interest.

Petitioner further points out that the requirements of paragraph 6 of the order are substantially the same as the requirements of § 128 of the "Truth-in-Lending" Act. However, paragraph 6 (g) of the order does not contain the limitation contained in paragraph (a) (7) of § 128, and further that the provisions of § 6 (h) of the order are not included anywhere in § 128 of the Act. As noted above, petitioner submits that the Commission does not have authority under the Federal Trade Commission Act to order such affirmative disclosure of credit terms, or to impose any requirements for the affirmative disclosure of credit terms which exceed the requirements of the "Truth-in-Lending" Act. In addition, since the framers of the "Truth-in-Lending" Act have not seen fit to include these particular requirements, petitioner submits that the public interest is adequately served without them.

Petitioner must point out one further requirement in paragraph 6 of the order, which is contained nowhere in the "Truth-in-Lending" Act. And that is the Commission's requirement that petitioner disclose "orally and in writing" to each customer who executes a retail credit instrument, etc. Petitioner vigorously argues that the inclusion of the requirement that customers be given this detailed information orally would serve little use or purpose, and would be extremely difficult and burdensome. Furthermore, the measurement of petitioner's

performance under this requirement would be open to endless dispute on the part of any customer, any third party, or the Commission itself. Petitioner would find itself in the position of being unable to prove its compliance with this requirement for disclosure on an oral basis. And yet petitioner would be laid under the threat of very heavy penalties for failure to comply with the Commission's cease and desist order.

The thrust of all movements for the disclosure of information has been to obtain that disclosure in a written form. The advantages are obvious. The disclosure cannot be altered, and what was in fact disclosed can be referred to or checked in the future. Petitioner submits that the public interest is best served by the requirement for written disclosure as set forth in the "Truth-in-Lending" Act, and that the Commission's requirement to disclose orally is ill advised, unnecessary and beyond the Commission's authority.

CONCLUSION

In conclusion petitioner points once again to the fact that there is no substantial evidence to support the decision and order of the Federal Trade Commission, and respectfully requests that the Commission's order be set aside.

Respectfully submitted,

David J. McKean
McKean & Whitehead
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Washington, D.C.
298-8730
Attorneys for petitioner

The Evening Star

WASHINGTON, D. C., MONDAY, MARCH 20, 1967

Consumer Protection Drive In District Showing Results

By DONALD SMITH
Star Staff Writer

Public hearings began today on a Federal Trade Commission complaint against the New York Jewelry Co., 719 7th St. NW, alleging unfair and deceptive practices that particularly victimize poor customers.

The complaint is one of 13 that have been issued in rapid succession over the past seven months as a result of a special consumer protection program initiated in the District in July, 1965.

The program is aimed at cracking down on firms that exploit the city's poor.

Eight of the 13 firms have been served final orders to cease and desist from such practices, and final action is pending in the other cases. Commission officials say "several more" complaints are imminent.

Results Noticeable

"We are now seeing the tangible results of the program," said Sheldon Feldman, FTC trial lawyer who is in charge of the program. "It takes at least a year to investigate a case. These complaints represent a tremendous increase over the rate of complaints issued in the past."

In the jewelry store case, the government charged Leon A. Tashof, owner of the company, with "taking unfair advantage of the uninformed and low-income members of the consuming public" in his business transactions, which include credit arrangements and the sale of eyeglasses and other merchandise.

The FTC complaint alleged that Tashof failed to "fully and

adequately inform his credit customers of all the credit charges or financing fees," and withheld other credit payment information.

The FTC cited "unconscionably high" prices on merchandise in the store, such as transistor radios that cost the firm \$3.45 but were sold for \$59.50.

"Credit Card" Usage

Also cited was a "credit card" which was given to prospective customers on the street "after determining that they have a job where garnishment can be obtained against their wages."

The card read that it "certifies that you have a preferred credit rating and attests to your character excellence."

Once inside the store, the complaint charged, the bearer of the card was often persuaded to buy eyeglasses or other items "at unconscionably high prices," often on credit. Later, Tashof or an employee "failed to fully and adequately inform his credit customers of all the credit charges or financing fees" and withheld other credit information, the FTC said.

During today's hearing Dave McKean, counsel for the jewelry firm, said the case was "novel" because of the charges of "unconscionably high" prices.

"I have never seen this kind of wording in an FTA case before," McKean said. The charge, he added, was "ill-founded and not based on sound fact or law."

During tomorrow's sessions, beginning at 10 a.m. on the seventh floor of the old Star Building, at 11th Street and Pennsylvania Avenue NW, government witnesses will testify on the FTC complaint.

Complaints brought against other firms under the consumer protection program contain similar charges.

"These practices affect everybody—the poor as well as the rich," said Charles Sweeney, director of the FTC deceptive practices division. "But they have more impact on poor people."

The program also is aimed at providing guidelines for all retail credit transactions falling within the jurisdiction of the FTC, according to commission chairman Paul Rand Dixon.

Last December the commission proposed such a guide, which also would be available as a model for states wishing to enact their own laws.

"I don't think anything is happening in the District of Columbia that's not happening up and down the main streets of America," said Dixon. "If the states have laws, they should be enforced. If they don't, they should examine to see what laws are needed."

Would Hit Misleading Ads

The guide would prohibit advertisements that quote credit arrangements such as "\$295, or pay \$17.88 per month," unless the advertisement also states the total number of payments required or the total amount of the payments.

The seller would be required to disclose each finance, credit, service or carrying charge and the total credit transaction price and say whether payments are to be made to the seller or to a finance company.

The guide would not cover charge accounts, revolving

See FTC, Page B-2

FTC

Lawyers Are on Duty
To Hear Complaints

Continued From B-1 with Betty Furness, who replaced Mrs. Peterson.

The commission is now receiving comments on the proposed guide, from businessmen, consumer organizations, the advertising industry, and the public.

The consumer protection program was set up at the suggestion of Sen. Warren G. Magnuson, D-Wash., chairman of the Senate Commerce Committee, who asked for a drive to develop "the model program for policing those unfair and deceptive practices to which the poor are particularly susceptible."

Lawyers Available Daily

Lawyers are on duty on the first floor of the FTC building from 9 a.m. to 4 p.m. daily to receive complaints from District residents. Complaints also are taken by phone.

Four lawyers process the complaints under the direction of William James, who is in charge of the office. Three other attorneys also work in the program on a part time basis.

Feldman pointed out that many people who bring complaints are under the impression the FTC can help them regain money they feel they have been cheated of.

In many cases a complaint is added to a dossier on a company already under investigation. Feldman estimates that roughly 25 percent of the complaints are "usable." An even smaller percentage directly results in a final cease and desist order.

Other Agencies Linked

The program is coordinated with a number of other agencies, including the United Planning Organization's Neighborhood Legal Services project, the Better Business Bureau, the U.S. attorney's office and the Post Office and Justice Departments.

Program lawyers kept day-to-day telephone contact with the President's former special assistant for consumer affairs, Mrs. Esther Peterson. This contact presumably will contin-

Feldman is a 24-year-old graduate of the George Washington University Law School who has been with the FTC for five years. He previously had served for a brief time with the District's Legal Aid Society.

Feldman approaches his job with fervor, as demonstrated by the increase in FTC complaints. But, he says, the number "isn't really important."

Can't Sue All

"We can't sue everybody," he said. "The idea of the program is to prosecute a number of cases so that these practices can be publicly highlighted. We have no intention of ridding the metropolitan area of all deceptive practices with this program. It is simply not possible. The best protection a consumer can have is to be informed."

Since the program began, final cease and desist orders have been issued against:

The Home Carpet Co., Inc.; the Empaco Corp. (also Empire Furniture & Appliance Co. and Empire Home Equipment Co.); the Youngstown Carpet Guild Distributors Co.; the R & R Sewing Machine & Vacuum Cleaner Co. (also R & R Sewing Machine Co.); the Queen Sleep Shoppers Ltd.; the Jos. M. Tanowski Co.; Angus Freezer Meats, Inc. (also Black Angus Freezer Meats, Steakland Freezer Meats, Inc., Black Angus Freezer Meats of Virginia, Inc.); the Edison Sewing Machine & Vacuum Cleaner Co. (also the Edison Sewing Machine Co.; Sewing Machine Exchange; Coles Adjustment Service; Edison Sales and Consumer Advertising and Research Service).

Besides the New York Jewelry Co., final action is pending in complaints against the General Transmission Corp. of Washington; Allied Enterprises, Inc.; School Services, Inc. (also Cinderella Career and Finishing Schools); and Consolidated Sewing Machine Co. (also Consolidated Sewing Machines, Co. of Washington, D.C.).

The Washington Post

Times Herald

THURSDAY, OCTOBER 27, 1966

Phone 223-6000

Mail

FTC to Label Deceptive Credit Costs

Rules Set to Tell Customers Exact Interest Charges

By Carol Henrich

Federal Trade Commission is planning to label a wide range of retail credit practices as unfair and deceptive, it was learned yesterday.

The new regulations, which the Commission is expected to approve in the next few weeks, would insure that consumers who buy on installment are told exactly how much they will pay in credit charges.

When anyone buys anything on credit, he will have to know what the actual cost of the item is, what the payments will be, how many payments he will make, how much he will ultimately pay, and to whom he will be making the payments," said Edward F. Kane, attorney in charge of the Commission's District Consumer Protection Division.

The new guidelines still being prepared by the Commission would require sellers to label retail credit transactions not previously termed unfair or deceptive in FTC cases.

- Sale of a customer's contract or promissory note to a finance company without informing the customer at the time of the sale. Often, said Downs, if the merchandise is defective and the seller will not repair or replace it, the customer is still obliged to continue payments to the finance company.
- Failure to tell the customer the total purchase price of an item. Customers are frequently told only the amount to be paid each month and the number of payments. Some consumers are unable to multiply and have no idea of the total cost, said Downs.
- Referral sales, in which a customer contracts to buy an expensive item with the understanding he will get money back from subsequent sales to his friends. If the references do not buy, the customer receives no kickback and has to continue his own high payments.
- Refusal to refund down payments on ordered merchandise which the seller is unable to obtain. In many such cases, the customer is required to apply his down payment to other merchandise instead of receiving a cash refund.
- Deceiving customers by asking them to sign "receipts" for merchandise delivered on approval. Often the receipts turn out to be actual sales contracts which the customers have not bothered to read.

"We can't control what the merchants charge for credit, but we can let the customer know what he is getting," Kane said.

See CREDIT, A6, Col. 6

CREDIT—From Page A1

FTC to Label Unfair Credit Practices

know how much he is paying for credit," said Downs.

Downs said some of the new guides were sparked by complaints received in the Commission's Consumer Complaints Office, which opened in July, 1965. The Commission has issued formal complaints against eight local merchants and investigated many more as a result of the more than 500 problems brought to the office.

"We have found out that the low-income segment of the

consuming public is not as knowledgeable or as sophisticated as perhaps had been assumed," Downs said.

"We have gotten complaints that were very informative as to their susceptibility to unfair treatment," he said. "For example, they are reluctant to complain against merchants who have overcharged them because at least these merchants give them credit. And invariably they will go back and let the same people cheat them again."

After the Commission gives initial approval to the new list of unfair and deceptive credit practices, merchants will be asked to file objections to be considered before final adoption.

Mme. Chiang Returns

Reuters

TAIPEI, Taiwan, Oct. 26
Mrs. Chiang Kai-Shek returned today from a 14-month speaking tour of the United States.

Entertainment Watch

FTC Hits

Easy Credit

Practices

By William Raspberry

WASHINGTON, D.C. (UPI)—The Federal Trade Commission has announced that it is investigating complaints against a number of companies that are offering "easy credit" to consumers.

The commission says that these companies are often using deceptive practices to lure customers into borrowing money. One common tactic is to offer a low interest rate for a short period of time, only to increase it later. Another tactic is to offer a "free gift" or a "discount" to customers who borrow money. The commission says that these practices are often used to lure customers into borrowing money from companies that are not licensed to do so.

The commission also says that these companies often use high-pressure sales techniques to get customers to borrow money. They may use tactics such as "bait and switch" or "door-to-door" sales. The commission says that these practices are often used to lure customers into borrowing money from companies that are not licensed to do so.

The commission says that these companies often use deceptive practices to lure customers into borrowing money. One common tactic is to offer a low interest rate for a short period of time, only to increase it later. Another tactic is to offer a "free gift" or a "discount" to customers who borrow money. The commission says that these practices are often used to lure customers into borrowing money from companies that are not licensed to do so.

The New York Jewelry Co., at 710 Seventh Ave., for example, has been charged in a complaint with detaining customers on the street and, after ascertaining that they have jobs, offering them credit. The company is charged with offering them "free gift" cards and an instant good credit rating.

The gifts are worth very little—usually a pocket comb or a ballpoint pen. But the "easy credit" is offered at rates that far exceed the rates charged by other merchants for similar merchandise, the complaint charges.

THE COMMISSION cited as one example a transistor radio that New York Jewelry bought for \$3.45 and sold, the FTC charges, on "easy credit" terms, for \$59.50.

In another case, General Transmissions Corp., 2912 Wadsworth rd., no., is charged with misrepresenting both the quality and cost of its repair jobs.

The Washington Post

City Life
in Greater Washington

AREA NEWS

OBITUARIES

CLASSIFIED

SECTION C

MONDAY, OCTOBER 24, 1966

C1

According to the FTC complaint, General Transmissions advertised that it would remove, dismantle, inspect, reassemble and re-install a transmission for \$22. But the \$22 price is little more than bait to lure the customer into contracting for expensive repair jobs and the firm frequently refused to reassemble and re-install transmissions for that price, the FTC alleged.

"When a customer brings his automobile in for transmission repairs, he is usually told that the problem is slight and can be repaired for a small or nominal sum and that all work is unconditionally guaranteed," the FTC charged.

"The company thereby obtains authorization to do limited repair work described in general terms. When the customer returns to pick up his automobile he

See WATCH, C3, Col 4

WATCH—From CI

FTC Attacks Stores That Prey on Poor

is almost invariably told that he needs a major repair job, or a rebuilt transmission, costing a substantial amount."

OTHER COMPLAINTS involve some sewing machine and vacuum cleaner sales in which customers are offered the chance to "take over the payments" on a defaulted purchase.

In most of these cases, no prior purchase has been made and customers who thought they were taking over payments end up paying the full purchase price or more, the FTC said.

The local crackdown actually started more than a year ago with the investigation of numerous complaints. The FTC started its formal action in late summer.

According to Charles Sweeney, director of the FTC's Bureau of Deceptive Practices, the agency work is easier here because every Washington transaction is involved in interstate commerce. In other areas, it is necessary to prove that goods cross state lines before the FTC can assume jurisdiction.

So far, all merchants against whom charges have been issued have entered formal denials.

THE NEXT STEP, unless

THE WASHINGTON POST

Monday, Oct. 21, 1966

C3

there is what amounts to an out-of-court agreement, is a formal hearing. If the charges are substantiated, the FTC can issue orders enjoining certain specified practices. Fines of \$5000 can then be levied for each violation of the injunction.

The first hearing in the current series is slated tentatively for early December, and involves the Empire Furniture & Appliance Co. of 4911 Georgia ave. nw.

Sweeney, for obvious reasons, won't say how long the crackdown will last, but the FTC is continuing its investigations and expects to file more charges soon.

If the FTC can help curb some of the practices that make it so expensive to be poor, it will have won a major battle in the war on poverty.

What you ought to know about

**FEDERAL RESERVE
REGULATION**



Truth In Lending Consumer Credit Cost Disclosure

THIS NEW FEDERAL LEGISLATION GOES INTO EFFECT JULY 1, 1969

About This Pamphlet

If you extend consumer credit, then you must become familiar with Regulation Z on Truth in Lending. You will be responsible, as a creditor, for complying with the Regulation.

This pamphlet tells you how Regulation Z affects your business. It tells you what you must let your customers know when you offer or extend them consumer credit—including agricultural credit and real estate credit.

Here is what you'll find on the following pages:

- List of Federal Agencies that will enforce Regulation Z—as well as give you more information.
- Questions and Answers—answers to some of the questions you may ask. There are six sections: (1) general questions (2) finance charges and annual percentage rate (3) open end credit (4) loans and other types of credit (5) real estate credit and rescission (6) the advertising of credit. At the end of each answer you will find a reference to the section of Regulation Z that applies.
- Model forms to guide you.
- Example of a table.
- Regulation Z and the Law reprinted in its entirety—in center section.

Please note that the outside pamphlet material has been stated as simply and clearly as possible. **However, for exact information on what you must do to comply with the law, you must read thoroughly the applicable sections of Regulation Z.**

This new Regulation comes into effect on July 1, 1969, and covers exactly what you must disclose in writing to your customers and clients when you extend, arrange or just offer them credit.

Its Purpose

The purpose of Regulation Z is to let borrowers and customers know the cost of your credit so that they can compare your costs with those of other credit sources and avoid the uninformed use of credit. Regulation Z does not fix maximum, minimum, or any charges for credit.

Two Important Points to Bear in Mind

The *finance charge* and the *annual percentage rate* are really the two most important disclosures required by this regulation. They tell your customer, at a glance, how much he is paying for his credit and its relative cost in percentage terms.

The Businesses Affected

Regulation Z applies to: banks, savings and loan associations, department stores, credit card issuers, credit unions, automobile dealers, consumer finance companies, residential mortgage brokers, and craftsmen—such as plumbers and electricians. It also applies to doctors, dentists and other professional people, and hospitals. In fact to any individual or organization that extends or arranges credit for which a finance charge is or may be payable or which is repayable in more than four installments.

Material in this pamphlet has been prepared by the Board of Governors of the Federal Reserve System.

Enforcement

Specific responsibilities for enforcement of Regulation Z are divided among nine Federal agencies. A complete list of these agencies and the types of businesses they cover follows this section.

Penalties Under The Truth in Lending Act

If you fail to make disclosures as required under this legislation, your customer may sue you for twice the amount of the finance charge—for a minimum of \$100, up to a maximum of \$1000—plus court costs and attorney's fees. And if you willfully or knowingly disobey the law or Regulation Z and are convicted you could be fined up to \$5000, or be imprisoned for one year, or both.

New Credit Forms and The Ones You Use Now

If you have taken the proper steps to get any needed new credit forms before July 1, 1969, and find they cannot be delivered to you by that date, then you may be able to use your existing forms. But they must show clearly the information a customer must be given under Regulation Z. You may do this by adding to or altering your forms. However, after December 31, 1969, you may no longer do this.

Annual Percentage Rate—Tables

Figuring out the annual percentage rate of the cost of credit on individual transactions can be very complex in some instances. Chart makers can furnish you with specialized tables to meet your business needs. If you do not have special tables, and wish to obtain a set of tables that apply to all creditors you may write to your nearest Federal Reserve Bank or to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

From these sets of tables you can determine annual percentage rates or the amount of the finance charge for a given rate. Volume I, which costs \$1, provides four tables:

FRB100—M Covering up to 60 monthly payments with rates from
2% to 61.75%

FRB200—M Covering 61 to 120 monthly payments with rates from
2% to 41.75%

FRB300—M Covering 121 to 480 monthly payments with rates from
2% to 21.75%

FRB100—W Covering up to 104 weekly payments with rates from
2% to 61.75%

Volume II, also available at the cost of \$1, gives another set of tables with instructions, for use with Volume I above. It will help you work out annual percentage rates on irregular payment or multiple advance transactions.

Further Information

If you want more information or have any questions after studying this pamphlet, including Regulation Z, you can get help from the Federal agencies listed on the next page. You'll find trade associations and Chambers of Commerce helpful, too.

Federal Agencies

From the list that follows, you will be able to tell which Federal Agency covers your particular business. Any questions you have should be directed to that agency. These agencies are also responsible for enforcing Regulation Z.

National Banks

Comptroller of the Currency
United States Treasury Department
Washington, D.C. 20220

State Member Banks

Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Supervising Examiner for the District in which the non-member insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions

Regional Office of the Bureau of Federal Credit Unions, serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission

Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Retail, Department Stores, Consumer Finance Companies, and All Other Creditors

Truth in Lending
Federal Trade Commission
Washington, D.C. 20580

REGULATION



Some general questions and answers

Q: What types of credit are covered under Regulation Z?

A: Generally, credit you extend to people for personal, family, household or agricultural uses, not exceeding \$25,000.

(Reg. Z/226.2 (k))

But *ALL* real estate credit transactions for these purposes are covered regardless of the amount.

(Reg. Z/226.3 (c))

Q: What types of credit are not covered?

A: The following are not affected by Regulation Z: (Reg. Z/226.3)

1. Business and commercial credit—except agricultural credit.
2. Credit to Federal, State and local governments. (However, governmental units extending credit to individuals are affected by this law.)
3. Transactions in securities and commodities accounts with a broker dealer registered with the Securities & Exchange Commission.
4. Transactions under certain public utility tariffs.
5. Credit over \$25,000—except real estate transactions.

Q: Can a State law be substituted for Regulation Z?

A: Yes it can, provided The Federal Reserve Board makes that determination as provided by law. Any determination made will be published

(Reg. Z/226.12). Creditors should be guided by Reg. Z/226.6 (b) and (c) in the meantime.

Q: What happens if I not only follow Regulation Z but also elect to follow inconsistent State law?

A: In these cases the State disclosure may be shown on a separate sheet. They may also be shown on the same statement as the Federal disclosures. But in this event they must appear separately and below the Federal disclosure, clearly marked that they are inconsistent with the Federal disclosures, and separated by a dividing line. Regulation Z is very specific on these points. (Reg. Z/226.6 (c))

Q: Is any special terminology prescribed?

A: Yes, certain terminology is specified that must be used in making disclosures required by the Regulation.
(Reg. Z/226.6 (a); Reg. Z/226.7 (b) (c);
Reg. Z/226.8 (b) (c) (d); Reg. Z/226.9 (b); Reg. Z/226.11 (c))

Q: Do disclosures have to be made in the order they appear in the Regulation?

A: No, but they must be listed in an order which will be meaningful to your customer. The examples of forms illustrate ways in which this may be done. (See pages 18 to 29 of this pamphlet.) (Reg. Z/226.6 (a))

Q: What terms are used to describe credit transactions in the Regulation?

A: The Regulation divides all consumer credit transactions into two broad categories; open-end credit, and credit other than open-end. These are discussed in subsequent sections of these Questions and Answers.

Q: How long do I have to keep records?

A: You should keep evidence of compliance for two years. (Reg. Z/226.6 (i))

Q: Will anyone inspect my records?

A: If asked by the proper agency you must show your records relating to disclosure and evidence of compliance. (Reg. Z/226.6 (i))



Some questions and answers on the finance charge and annual percentage rate

Q: What is the finance charge?

A: It is the total of all costs which your customer must pay, directly or indirectly for obtaining credit. (Reg. Z/226.4)

Q: What costs are included in the finance charge?

A: Here are some of the more common items that you must include in your finance charge. See Reg. Z/226.4 for others and for qualifications which apply.

1. Interest.
2. Loan fee.
3. Finders fee or similar charge.
4. Time price differential.
5. Amount paid as a discount.
6. Service, transaction or carrying charge.
7. Points.
8. Appraisal fee (except in real estate transactions).
9. Premium for credit life or other insurance, should you make this a condition for giving credit.
10. Investigation or credit report fee (except in real estate transactions).

Q: Are all costs part of the finance charge?

A: No, some costs which would be paid if credit were not employed may be excluded. However, you must itemize and show them to your customer. (Reg. Z/226.4 gives a complete list.) Here are a few examples:

1. Taxes.
2. License fees.
3. Registration fees.
4. Certain title fees and other legal fees.
5. Some real estate closing fees.

Q: In what form is the finance charge to be shown to the customer?

A: It must be clearly typed or written, stating the dollars and cents total and the annual percentage rate. The words "finance charge" and "annual percentage rate" must stand out especially clear. (Reg. Z/226.6 (a))
In the sale of dwellings, the total dollar finance charge need not be stated, although the annual percentage rate must be included.

Q: What is the annual percentage rate?

A: Simply put, it is the relative cost of credit in percentage terms.
(Reg. Z/226.5 (e))

Q: Are maximum or minimum rates specified in Regulation Z?

A: No. Regulation Z does not fix maximum, minimum, or any charges for credit. But it requires that you show whatever rate you do charge.

Q: Do you ever have a choice about how you state the annual percentage rate?

A: Before Jan. 1, 1971 you have the option to disclose the annual percentage rate in dollar terms. For example—"\$11 finance charge per year per \$100 of unpaid balance." However, beginning Jan. 1, 1971, the rate *must* be stated as a percentage. (Reg. Z/226.6 (j))

Q: How accurate must the annual percentage rate be?

A: Accurate to the nearest one quarter of one percent. (Reg. Z/226.5)

Q: How is the annual percentage rate computed?

A: It depends on whether the credit is *open end* (Reg. Z/226.5 (a))
or *other than open end* credit. (Reg. Z/226.5 (b))



Some questions and answers about open end credit

Q: What is open end credit?

A: Typically it covers most credit cards and revolving charge accounts in retail stores, where finance charges are usually made on unpaid amounts each month. (Reg. Z/226.2 (r); Reg. Z/226.7)

Q: What must an open end credit customer be told under this law?

A: If it is a *new* account, then your customer must receive these specific items in writing to the extent applicable: (Reg. Z/226.7 (a))

1. The conditions under which the finance charge may be imposed and the period in which payment can be made without incurring a finance charge.
2. The method used in determining the balance on which the finance charge is to be made.
3. How the actual finance charge is calculated.
4. The periodic rates used and the range of balances to which each applies.
5. The conditions under which additional charges may be made along with details of how they are calculated.
6. Descriptions of any lien which you may acquire on a customer's property.
7. The minimum payment that must be made on each billing.

Q: What about customers who already have open end accounts on July 1, 1969?

A: The same information must be sent to them by July 31 if the account has an unpaid balance on July 1. Where no balance is owed on that date, the same information must be supplied on or before the first billing that

follows use of the account. (Reg. Z/226.7 (f))

Q: Are periodic statements necessary on open end accounts?

A: Yes, but only where there is an unpaid balance over \$1 or where a finance charge is made. (Reg. Z/226.7 (b))

Q: What sort of information must accompany a monthly statement?

A: Where applicable, you must give customers this information:
(Reg. Z/226.7 (b))

1. The unpaid balance at the start of the billing period.
2. The amount and date of each extension of credit and identification of each item bought.
3. Payments made by a customer and other credits: this includes returns, rebates and adjustments.
4. The finance charge shown in dollars and cents.
5. The rates used in calculating the finance charge plus the range of balances to which they apply.
6. The annual percentage rate.
7. The unpaid balance on which the finance charge was calculated.
8. The closing date of the billing cycle and the unpaid balance at that time.

Q: Where must this information appear?

A: Some items must appear on the actual face of the statement. Others may be shown on the reverse side; or, on a separate form enclosed in the same envelope. (Reg. Z/226.7 (c))

Q: How is the annual percentage rate determined on open end credit?

A: The finance charge is divided by the unpaid balance to which it applies. This gives the rate per month or whatever time period is used. The result is multiplied by 12 or the other number of time periods used by you during the year. (Reg. Z/226.5 (a))

Here's an example:

A typical charge of $1\frac{1}{2}\%$ is made on an unpaid balance where bills are sent out monthly. The annual percentage rate would be twelve times $1\frac{1}{2}\%$ or 18%.

Other methods for calculating the annual percentage rate on open end credit are detailed in Reg. Z/226.5 (a) and Reg. Z/226.7 (b) (6).



Some questions and answers about credit other than open end

Q: What types of credit are included?

A: Both loans and sales credit—in every case for a specified period of time where the total amount, number of payments, and due dates are agreed upon by you and your customer. Typically, it is used in buying or financing the purchase of “big ticket” items. A good example is a loan from a finance company to buy an automobile. Another example is credit extended by a store to buy a washing machine, a television set, or other major appliance. It also includes a single payment loan. (Reg. Z/226.8)

Q: What must the credit customer be told in these types of transactions?

A: You must present to your customer in writing the following information as applicable, plus additional information relating to the type of credit extended. (Reg. Z/226.8 (b))

1. The total dollar amount of the finance charge; except in the case of a credit transaction to finance purchase of a dwelling.
2. The date on which the finance charge begins to apply, if this is different from the date of the transaction.
3. The annual percentage rate. (For exception see Reg. Z/226.8 (b) (2) (i) (ii))
4. The number, amounts and due dates of payments.
5. The total payments—except in the case of first mortgages on dwelling purchases.
6. The amount you charge for any default, delinquency, etc. or method you use for calculating that amount.

7. Description of any security you will hold.
8. Description of any penalty charge for prepayment of principal.
9. How the unearned part of the finance charge is calculated in the case of prepayment. Charges deducted from any rebate or refund must be stated.

Q: Are there any other things customers must be told?

A: That depends on the transaction—whether it is a loan or a credit sale:

Q: In the case of a loan, what do I have to tell my customers?

A: In addition to the information given your customer, as previously indicated, you must also provide this information: (Reg. Z/226.8 (d))

1. The amount of credit to be given to your customer. This includes all charges which are part of the amount of credit extended but are not a part of the finance charge. This information must be itemized.
2. Amounts that are deducted as prepaid finance charges and required deposit balances.

Q: Regarding credit sales, what additional information do I give these customers?

A: Again, you must give your customers all the information in the answer to the second question in this section, and the following additional information as applicable: (Reg. Z/226.8 (c))

1. The cash price
2. The down payment, including trade-in
3. The difference between the two
4. All other charges, itemized, that are included in the amount financed but not part of the finance charge
5. The unpaid balance
6. Amounts deducted as prepaid finance charges or required deposit balances
7. The amount financed
8. The total cash price, finance and all other charges. (This does not apply to the sale of a dwelling.)

Q: When must customers receive all this information on loan or credit sales?

A: Before the credit is extended. (Reg. Z/226.8 (a))

Q: Must this information be given to customers in writing?

A: Yes. You must include the information on the face of the note or other instrument evidencing the obligation, or on a separate sheet that identifies the transaction. (Reg. Z/226.8 (a))

Q: Are monthly statements required?

A: No. But if you do send out monthly statements, you must show clearly

the annual percentage rate, and the period in which a payment must be made to avoid late charges. (Reg. Z/226.8 (n))

Q: How is the annual percentage rate calculated on loans or credit other than open end?

A: By the actuarial method—payments are applied first to interest due and any remainder is then applied to reduce principal. (Reg. Z/226.5 (b))

Q: What are examples of the actuarial method?

A: Here are two simple examples:

1. A bank loan of \$100 repayable in equal monthly installments over one year is made, at a 6% add-on finance charge. The annual percentage rate would be 11%. The borrower would repay \$106 over one year. He would only have use of the full \$100 until he made his first payment, and less and less each month as payments are made. The effect is that the actual annual percentage rate is almost twice the add-on percentage rate.
2. Using the same example as above with the 6% finance charge discounted in advance. The annual percentage rate would be 11½% because the customer would only receive \$94 and have to repay \$100. He would have full use of only \$94 of the loan up to the time he makes his first payment.

Q: But isn't the actuarial method very complicated?

A: Yes, it is. Recognizing this, the Federal Reserve Board has prepared tables showing the annual percentage rate based on the finance charge and the number of weekly or monthly payments to be made. These tables are available from the Federal Reserve Board and Federal Reserve Banks at a nominal cost. (Reg. Z/226.5 (c))

Q: Must I use the Board's Annual Percentage Rate tables?

A: No. You may wish to purchase specially prepared tables for your type of business from one of several table or chart publishers. Trade associations and financial institutions can be helpful also. (Reg. Z/226.5 (c) (2))

Q: Must the creditor always show the annual percentage rate?

A: Generally yes, except that on credit other than open end credit, if the finance charge is \$5 or less, and applies to credit of \$75 or less, it need not be shown. The same exception applies to a finance charge of \$7.50 or less on credit of more than \$75. (Reg. Z/226.8 (b) (2) (i) & (ii))

Z

Some questions and answers about real estate

Q: Is real estate credit covered under Regulation Z?

A: Yes. All real estate credit *in any amount* is covered under this Regulation when it is to an individual and not for business purposes, unless the business purpose is agriculture.

Q: Does real estate credit cover more than mortgages?

A: Yes, very definitely. Any credit transaction that involves any type of security interest in real estate of a consumer is covered.
(Reg. Z/226.2 (w), (x) (y) & (z))

Q: Are there any special provisions that apply to real estate credit?

A: Two basic points:

1. You do not have to show the total dollar amount of the finance charge on a credit sale or first mortgage loan to finance the purchase of the customer's dwelling. (Reg. Z/226.8 (c) (8) and (d) (3))
2. In many instances, your customer has the right to cancel a credit arrangement within three business days if his residence is used as collateral for credit. (Reg. Z/226.9)

Q: Must a creditor inform his customer of the right to cancel?

A: Yes. He must furnish the Notice prescribed by the Regulation.
(Reg. Z/226.9 (b))

Q: What must the customer do to cancel a transaction under the Regulation?

A: A customer may cancel a transaction

1. By signing and dating the Notice to customer required by Federal law, which he receives from the creditor, *and* either
(a) mailing the Notice to the creditor at the address shown on the Notice,

- or (b) delivering the Notice to the creditor at the address shown on the Notice either personally or by messenger (or by other agents),
- or 2. by sending a telegram to the creditor at the address shown on the Notice. A brief description of the transaction which the customer wishes to cancel should be included in the telegram.
- or 3. by preparing a letter (or other writing) which includes a brief description of the transaction which he wishes to cancel, *and* either (a) mailing the letter (or other writing) to the creditor at the address shown on the Notice.
- or (b) delivering the letter (or other writing) to the creditor at the address shown on the Notice either personally or by messenger (or by other agents).

Q: What if the customer telephones that he is going to cancel?

A: *A telephone call to the creditor may not be used to cancel a transaction; WRITTEN notice of cancellation is required.* If the customer takes one of the above steps to cancel within the three day period, he has effectively cancelled the transaction.

Q: What if I haven't received the notice of cancellation in three days?

A: You should allow time for a mailed letter or telegram sent within the three day period to be delivered, and determine that your customer has not cancelled the transaction.

Q: Does this right of cancellation apply to a first mortgage on a residence?

A: A first mortgage to finance the purchase of your customer's residence carries no right to cancel. *However*, a first mortgage for any other purpose and a second mortgage on the same residence may be cancelled.
(Reg. Z/226.9 (g))

Q: What happens regarding cancellation in the case of a mechanic's lien or similar security interest acquired by a craftsman who works on credit?

A: Take a craftsman, for example, who charges his customers a finance charge or allows payment in more than four installments. His customer does have a right to cancel, but only within three business days. Unless there is an emergency the craftsman should wait three days before starting work.
(Reg. Z/226.9 (c))

Q: Suppose a customer needs emergency repairs and cannot wait for three days?

A: A customer may waive his right to cancel a credit agreement if credit is needed to meet a bonafide personal financial emergency and if failure to start repairs would endanger him, his family, or his property.
(Reg. Z/226.9 (e))

Continued on page 17 of this section, following the printed Regulation (white pages).

**Board of Governors
of the
Federal Reserve System**

**TRUTH IN LENDING
REGULATION Z
INTERPRETATIONS**

Thirty-four interpretations of Regulation Z were issued by the Board prior to July 1, 1969, its effective date. Although the interpretations are listed in the table of contents under the main section of the Regulation to which they relate, in some cases an interpretation may be applicable to more than one section. In these cases, cross references are shown in the table of contents.

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**TRUTH IN LENDING
INTERPRETATIONS OF REGULATION Z
SECTION 226.2**

**SECTION 226.201—LAY-AWAY PLANS AS
EXTENSIONS OF CREDIT**

Many vendors offer Lay-Away Plans under which they retain the merchandise for a customer until the cash price is paid in full and the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the merchandise.

A purchase under such a Lay-Away Plan shall not be considered an extension of credit subject to the provisions of Regulation Z.

5/5/69

**SECTION 226.202—SECURITY INTEREST—
CONFESSION OF JUDGMENT—
COGNOVIT NOTES**

Under § 226.2(z) "security interest" is defined to include confessed liens whether or not recorded and, in general, to include any interest in property which secures payment or performance of an obligation. In certain transactions involving a security interest, under § 226.9 the customer has a right of rescission.

In some of the States, confession of judgment clauses or cognovit provisions are lawful and make it possible for the holder of an obligation containing such clause or provision to record a lien on property of the obligor simply by recordation entry of judgment; the obligor is afforded no opportunity to enter a defense against such action prior to entry of the judgment.

Since confession of judgment clauses and cognovit provisions in such States have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding *before* judgment may be entered or recorded against him, such clauses and provisions in those States are security interests under § 226.2(z) and for the purposes of § 226.7 (a)(7), § 226.8(b)(5), and § 226.9. This is the case even if the judgment cannot be entered until after a default by the obligor.

Confession of judgment clauses and cognovit provisions which, by their terms, exclude a lien on all real property which is used or is expected to be used as the principal residence of the cus-

tomers, would not bring a transaction under the provisions of § 226.9.

5/26/69

**SECTION 226.203—OPEN END CREDIT
DISTINGUISHED FROM OTHER CREDIT**

The fundamental qualification for "open end credit" under § 226.2(r) is that consumer credit be extended on an account pursuant to a plan under which (1) the creditor may permit the customer to make purchases or obtain loans from time to time directly or indirectly from the creditor, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in instalments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. Under an open end credit account plan, it is contemplated that there will or may be repetitive transactions on a revolving basis.

In certain cases, a form of contract or note relating to a single transaction provides that the finance charge be computed from time to time by application of a rate to the unpaid balance and stipulates required minimum periodic payments. However, the obligor has the privilege of making larger and more frequent payments than stipulated or paying the obligation in full at any time without penalty. The question arises as to whether the creditor should make disclosures in such circumstances under § 226.7 for open end credit accounts or under § 226.8 for credit other than open end.

Although the terms of such a contract or note meet the second and third requirements for such a plan, they do not meet the first of such requirements nor the basic qualification that consumer credit be extended on an account pursuant to a plan. Therefore, disclosures in this case are required to be made under § 226.8.

5/26/69

SECTION 226.3

**SECTION 226.301—AGRICULTURAL
PURPOSES—WHEN EXEMPT FROM
THE REGULATION**

Under § 226.3(a), the Regulation does not apply to "Extensions of credit to organizations, including governments, or for business or commercial purposes, other than agricultural purposes." The definition of "organization" in § 226.2(s)

includes a corporation, trust, estate, partnership, cooperative, or association as well as governmental entities. The question arises as to whether the Regulation applies to extensions of credit to organizations, including governments, for agricultural purposes.

Extensions of credit to organizations, including governments, for agricultural purposes are exempt from the Regulation.

5/26/69

SECTION 226.4

SECTION 226.401—SERVICE CHARGES ON ACCOUNTS NOT PAID WITHIN A GIVEN PERIOD OF TIME

Some vendors bill their customers for property or services purchased under the terms of a credit plan which requires that the full amount of each billing be paid within a stipulated period after billing, with no privilege of paying in instalments. If a bill is not paid within that stipulated period of time, the vendor imposes a service charge periodically on the unpaid balance until the account is paid in full. The question arises as to whether Regulation Z applies to such transactions.

When in the ordinary course of business a vendor's billings are not paid in full within that stipulated period of time, and under such circumstances the vendor does not, in fact, regard such accounts in default, but continues or will continue to extend credit and imposes charges periodically for delaying payment of such accounts from time to time until paid, the charge so imposed comes within the definitions of a "finance charge" [§ 226.2(q)] applicable in each case to the amount of the unpaid balance of the account. Under such circumstances the credit so extended comes within the "open end credit" in § 226.2(r), the vendor is a creditor as defined in § 226.2(m), and the disclosures required for open end credit accounts under § 226.7 shall be made.

4/22/69

SECTION 226.402—TERM OF INSURANCE COVERAGE

Under § 226.4(a)(5) and (6) certain disclosures of insurance premium costs, if applicable, are required. The question arises as to whether such amounts of cost disclosed must include the cost of insurance for the full term of the transaction.

Under § 226.4(h) the cost of insurance for the full period of insurance coverage which the creditor will require shall be disclosed if the cost of the insurance premium is required to be included in the finance charge. However, if the cost of insurance is

not required to be included in the finance charge, the cost to be disclosed need only be the cost of premiums for the term of the initial policy or policies written in connection with the transaction, accompanied by a statement of the type of insurance and the term thereof.

5/5/69

SECTION 226.403—DISCLOSURE OF COST OF PROPERTY INSURANCE WHEN NOT OBTAINABLE FROM OR THROUGH THE CREDITOR

In many cases a creditor requires insurance against loss or damage to property or liability arising out of its use but such insurance is not obtainable from or through him. The question arises under § 226.4(a)(6) as to whether such a creditor must make any disclosures to avoid having to include the insurance premium in the finance charge.

Irrespective of whether such insurance may be obtained from or through the creditor, if the creditor requires property insurance and wishes to exclude the cost from the finance charge, he is required to state clearly and conspicuously to the customer that he may choose the person through which the insurance is to be obtained. However, if the insurance is not obtainable from or through the creditor, he is not required to disclose the cost of that insurance, unless, of course, the premiums are included in the "amount financed, in which case it would have to be disclosed under § 226.8(c)(4) or (d)(1), as the case may be.

5/26/69

SECTION 226.5

SECTION 226.501—USE OF RANGES OR BRACKETS TO DETERMINE PERIODIC RATE OF FINANCE CHARGE ON OPEN END ACCOUNTS

Section 226.5(a)(1) of Regulation Z, in effect, gives a creditor the option in certain circumstances of stating (1) two or more separate annual percentage rates (e.g., the rate on a \$700 balance might be stated as 18% on balance to \$500 and 12% on balance over \$500), or (2) a single annual percentage rate determined by the "quotient method" resulting from applying the rates to a total balance (e.g., in the example above, an annual percentage rate of 16¼% on a \$700 balance).

Section 226.5(a)(2), which relates to the use of ranges or brackets to compute periodic finance charges, does not prevent a creditor who uses such brackets from exercising the options referred to in section 226.5(a)(1).

4/2/69

SECTION 226.502—ANNUAL PERCENTAGE RATE ON SINGLE ADD-ON RATE TRANSACTIONS

The application of a single add-on rate to transactions of varying maturities, when converted to an annual percentage rate determined by the actuarial method, results in minor variations. Such annual percentage rate variations on maturities up to 60 months are so insignificant that separate computations are unwarranted.

The question arises as to whether a creditor may disclose a single annual percentage rate on all such transactions based upon the highest rate which will arise from the application of the same single add-on rate to each of such transactions.

When the same add-on rate is applied to all transactions within a range of maturities up to 60 months, and provided that all payments on each transaction are equal in amount and due at equal intervals of time within the limits provided by § 226.5(d), a single annual percentage rate may be disclosed, in which case it shall be the highest annual percentage rate that may be applicable to any such transactions.

5/26/69

SECTION 226.503—MINOR IRREGULARITIES—MAXIMUM IRREGULAR PERIOD LIMITS

Section 226.5(d) specifies certain minimums in determining what minor irregularities in first payment periods may be disregarded in determining the annual percentage rate. The question arises as to what maximum limits for such periods would still permit the irregular periods to be considered regular in computing the annual percentage rate.

If the period from the date on which the finance charge begins to accrue and the date the final payment is due is not less than three months in the case of weekly payments, six months in the case of biweekly or semimonthly payments, or one year in the case of monthly payments, the maximum interval of time from the date the finance charge begins to accrue to the date the first payment is due is as follows:

- (1) in the case of weekly payments, 12 days;
- (2) in the case of biweekly or semimonthly payments, 25 days;
- (3) in the case of monthly payments, 50 days

If the period from the date on which the finance charge begins to accrue and the date the final payment is due is less than three months in the case of weekly payments, six months in the case of biweekly or semimonthly payments, or one year in the case of monthly payments, the maxi-

mum interval of time from the date the finance charge begins to accrue to the date of the first payment is due is as follows:

- (1) in the case of weekly payments, 10 days;
- (2) in the case of biweekly or semimonthly payments, 21 days;
- (3) in the case of monthly payments, 42 days.

6/10/69

SECTION 226.6

SECTION 226.601—OVERSTATEMENT OF ANNUAL PERCENTAGE RATE

Section 226.6(h) of Regulation Z provides that in certain circumstances the disclosure of an annual percentage rate which is greater than that required to be disclosed under the Regulation does not in itself constitute a violation of the Regulation. Under this section may a disclosure regarding an annual percentage rate (e.g. "the annual percentage rate does not exceed 18%") be preprinted on a contract or periodic statement and comply with disclosure requirements when the actual rate will at times be lower (e.g. 15%) for some transactions?

Section 226.5 specifies the methods which shall be employed in determining annual percentage rates. Section 226.6(h) is not intended to provide an alternative to these requirements, but is merely to provide appropriate relief to a creditor who overstates accidentally. Any disclosure of an annual percentage rate whether preprinted or otherwise which overstates the annual percentage rate determined in accordance with section 226.5 other than through inadvertence does not comply with requirements.

4/2/69

SECTION 226.602—TRANSITION PERIOD—USING EXISTING FORMS, SUITABLY ALTERED OR SUPPLEMENTED

Section 226.6(k) of Regulation Z provides that, in some circumstances, if a creditor has been unable to obtain needed new printed forms by July 1, 1969, he may use existing forms until new ones are obtained, but not later than December 31, 1969. In such instances, the existing forms must be suitably altered or supplemented to make necessary disclosures clearly and conspicuously. The requirement that existing forms be supplemented is met by attachments or enclosures.

Also in some instances, creditors encounter unavoidable delays in obtaining necessary equipment or computer programs needed to utilize new printed forms. Such delays can produce prob-

lems comparable to those involved in delays in obtaining printed forms. In such a situation, a creditor, under § 226.6(k), may continue to use existing forms until the means of utilizing the new forms are available, but in no event later than December 31, 1969, and subject, of course, to the conditions applicable under § 226.6(k): namely, that the creditor must have taken *bona fide* steps prior to July 1, 1969, to obtain the necessary equipment or computer programs, and the existing forms must be "altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose are set forth clearly and conspicuously."

4/2/69

SECTION 226.603—DISCLOSURES IN TRANSACTION INVOLVING MULTIPLE CUSTOMERS

Section 226.6(e) states the general rule that, except in the case of a rescindable transaction under § 226.9, where there are multiple customers in a transaction, the creditor is only required to make disclosures to one of them. However, in determining which customer shall receive disclosures, the creditor may not select a customer who is secondarily liable, such as an endorser, comaker (when designated as surety), guarantor, or a similar party. This does not prohibit the creditor from also furnishing disclosures to such persons who are secondarily liable.

4/2/69

SECTION 226.604—INCONSISTENT STATE REQUIREMENTS

Section 226.6(b) of Regulation Z indicates types of State law requirements that are inconsistent with Regulation Z, and § 226.6(c) indicates the methods of dealing with such inconsistent requirements of State law.

Whether State laws are inconsistent with Regulation Z necessarily depends on the nature of the State laws. Section 226.6(b) (1) provides that State law is inconsistent to the extent that it "requires a creditor to make disclosures different from the requirements of this part with respect to form, content, terminology, or time of delivery." This refers to disclosures of the kinds of information covered by Regulation Z, and *not* to other or collateral information such as a statement telling the customer that he should read the contract carefully, or that there should be no blanks in the contract. Similarly, it does not refer to headings that State law may require on a contract such as

"Retail Installment Contract." Similarly, a specification in a State law that certain size type must be used is not necessarily inconsistent with the requirements of Regulation Z.

4/22/69

SECTION 226.605—RATE CHARTS AND TABLES UNAVAILABLE

Subject to certain conditions, § 226.6(f) of Regulation Z permits a creditor to use an estimate or approximation of information when the information is "unknown or not available to the creditor, and the creditor has made a reasonable effort to ascertain it."

It appears that some creditors who require special charts or tables in order to operate with necessary efficiency in compliance with Regulation Z, and who have placed orders for such charts or tables with suppliers of them, may be unable to obtain such charts or tables by July 1, 1969, the effective date of Regulation Z.

In the circumstances indicated, when the necessary charts or tables have been ordered prior to July 1, 1969, and are temporarily unavailable to a creditor who has thus made a reasonable effort to obtain them, § 226.6(f) permits the creditor to use an estimate or approximation of the annual percentage rate and other information during the interim until they become available, subject, of course, to the other requirements of that paragraph.

6/20/69

SECTION 226.7

SECTION 226.701—PERIODIC STATEMENTS—FINANCE CHARGE RESULTING FROM MORE THAN ONE PERIODIC RATE

Section 226.7(b) (4) of Regulation Z requires that a periodic statement for open end credit show the amount of any finance charge, and that the statement also itemize and identify that portion of the finance charge that is due to application of one or more periodic rates and that portion due to any other charge such as minimum, fixed, check service, transaction, activity, or similar charge.

This does not require the statement to state separately the portions of a finance charge due to application of two or more periodic rates. For example, if a creditor charges 1½% per month on the first \$500 of a balance and 1% per month on amounts over \$500, the monthly charge on a \$600 balance would be \$8.50, which must be

shown. However, it would not be necessary to itemize the two components (\$7.50 and \$1.00) of the \$8.50 charge. Under section 226.7(b)(5), the periodic rates that may apply to the account, and the applicable range of balances must, of course, be shown, but this could be preprinted.

4/2/69

SECTION 226.702—LOCATION OF STATEMENT OF HOW THE BALANCE WAS DETERMINED

Section 226.7(b)(8) requires the creditor of an open end credit account to disclose on the periodic statement, "the balance on which the finance charge was computed, and a statement of how that balance was determined." Under § 226.7(c) which relates to the location of disclosures there is no specific reference to the placement of the "statement of how that balance was determined" when separated from the balance to which it relates. The question arises as to where, under such circumstances, this required statement shall appear on the periodic statement.

If separated from the balance to which it relates, the required statement of how the balance was determined may be placed on the face of the periodic statement, the reverse side of the periodic statement, or on an enclosed supplement; however, where such statement and balance do not appear together, the statement shall make clear the balance to which it refers.

4/22/69

SECTION 226.703—FINANCE CHARGE BASED ON AVERAGE DAILY BALANCE IN OPEN END CREDIT ACCOUNTS

Section 226.7(b)(8) requires that periodic statements for open end accounts shall disclose, among other things, "The balance on which the finance charge was computed, and a statement of how that balance was determined." In some instances, creditors compute a finance charge on the average daily balance by application of a monthly periodic rate. In such case, this information is adequately disclosed if the statement gives the amount of the average daily balance on which the finance charge was computed, and also states how the balance is determined. In other instances, the finance charge is computed on the balance each day by application of a daily periodic rate and such charges are accumulated and debited to the account in a single amount for the billing cycle. The question arises whether the periodic state-

ment must show for each day of the billing cycle a balance on which a finance charge was computed.

If a daily periodic rate is used, the balance to which it is applicable shall be stated as follows:

(1) A balance for each day in the billing cycle; or

(2) The sum of the daily balances during the billing cycle, or

(3) The average daily balance during the billing cycle in which case the creditor shall state on the face of the periodic statement, its reverse side, or on an enclosed supplement that the average daily balance is multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

In each case the annual percentage rate shall be determined and disclosed by multiplying the daily periodic rate by 365.

5/5/69

SECTION 226.704—ANNUAL PERCENTAGE RATE COMPUTATION WHERE TRANSACTION CHARGES ARE IMPOSED ON OPEN END CREDIT ACCOUNTS

Section 226.7(b)(6) prescribes the method by which an annual percentage rate is computed where the creditor of the open end credit account imposes finance charges with respect to specific transactions during the billing cycle.

In determining the denominator of the fraction under § 226.7(b)(6), no amount will be used more than once when adding the sum of the balances to which periodic rates apply to the sum of the amounts financed to which specific transaction charges apply. In every case the full amount of transactions to which specific transaction charges apply shall be included in the denominator. Other balances or parts of balances shall be included according to the manner in which a periodic rate is applied, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none

A specific transaction of \$100 occurs on first day of the billing cycle.

The average daily balance is \$100.

A specific transaction charge of 3% is applicable to the specific transactions.

The periodic rate is 1½% applicable to the average daily balance.

The numerator is the amount of the finance charge, which is \$4.50.

The denominator is the amount of the transaction (which is \$100), plus the amount by which the balance to which the periodic rate applies exceeds the amount of specific transactions (such excess in this case is 0), totaling \$100.

The annual percentage rate is the quotient (which is 4.5%) multiplied by 12 (the number of months in a year), i.e. 54%.

2. Previous balance—\$100

A specific transaction of \$100 occurs at midpoint of the billing cycle.

The average daily balance is \$150.

A specific transaction charge of 3% is applicable to the specific transaction.

The periodic rate is $1\frac{1}{2}\%$ applicable to the average daily balance.

The numerator is the amount of finance charge, which is \$5.25.

The denominator is the amount of the transaction (which is \$100), plus the amount by which the balance to which the periodic rate applies exceeds the amounts of specific transactions (such excess in this case is \$50), totaling \$150.

As explained in example 1, the annual percentage rate is $3.5\% \times 12 = 42\%$.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is \$4.50 and the denominator is \$200 (the amount of the transaction, \$100, plus the balance to which only the periodic rate is applicable, the \$100 previous balance).

As explained in example 1, the annual percentage rate is $2.25\% \times 12 = 27\%$.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credit) and the customer made a payment of \$50 at midpoint of billing cycle, the numerator is \$3.75 and the denominator is \$150 (the amount of the transaction, \$100, plus the balance to which only the periodic rate is applicable, the \$50 adjusted balance). As explained in example 1, the annual percentage rate is $2.5\% \times 12 = 30\%$.

5. Previous balance—\$100

A specific transaction (check) of \$100 occurs at the midpoint of the billing cycle.

The average daily balance is \$150.

The specific transaction charge is 25 cents per check. The periodic rate is $1\frac{1}{2}\%$ applied to the average daily balance. The numerator is the amount of the finance charge, which is \$2.50,

and includes the 25 cents check charge and the \$2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is \$100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is \$50), totaling \$150. As explained in example 1, the annual percentage rate would be $1\frac{2}{3}\% \times 12 = 20\%$.

Regardless of such method of computation, the annual percentage rate to be disclosed shall be not less than the periodic rate multiplied by the number of periods in a year or the rate as may otherwise be determined under § 226.5(a).

5/5/69

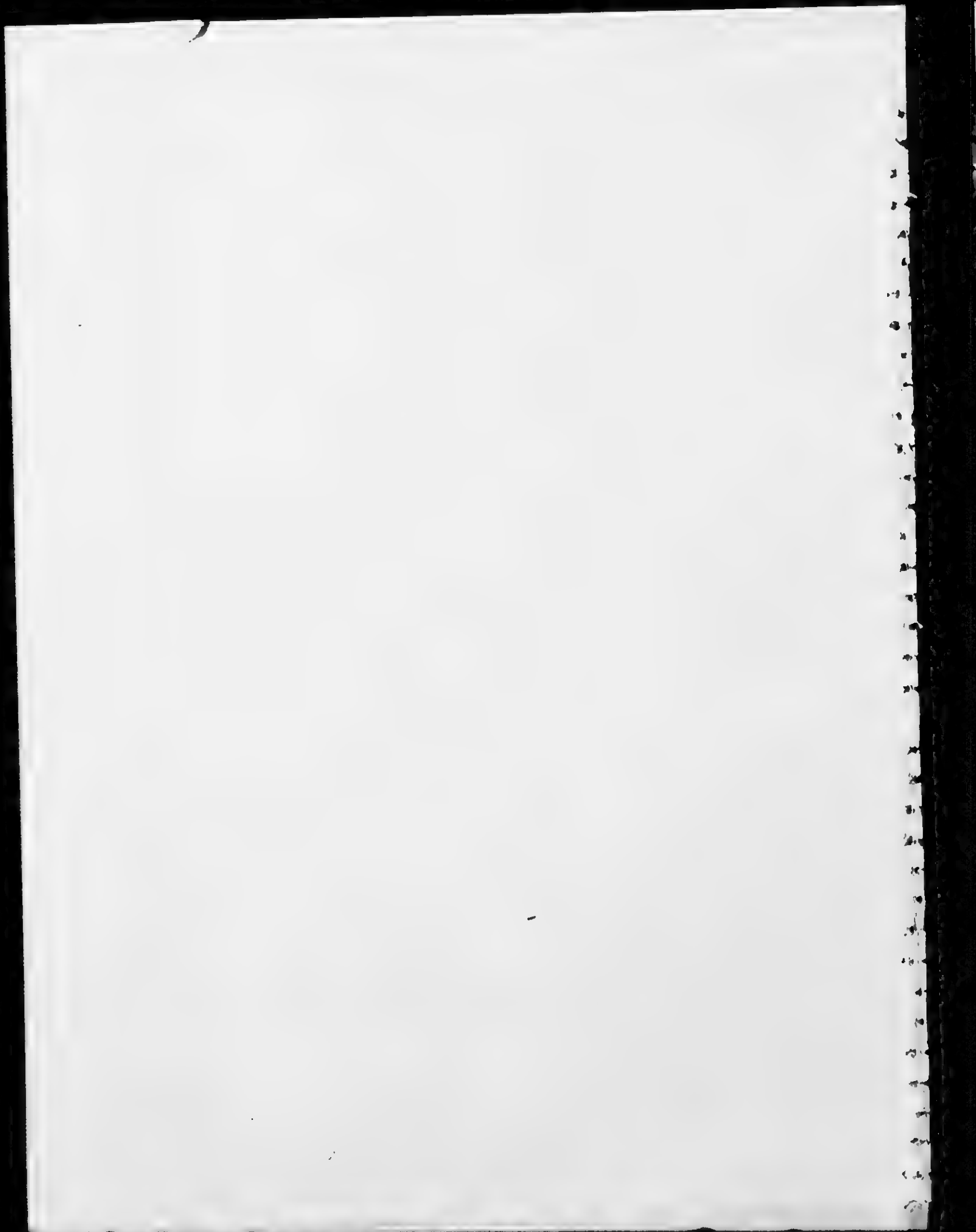
SECTION 226.8

SECTION 226.801—LOCATION OF DISCLOSURES WHEN CONTRACT, SECURITY AGREEMENT, AND EVIDENCE OF TRANSACTION ARE COMBINED IN A SINGLE DOCUMENT

Some creditors incorporate the terms of a contract, a security agreement, and evidence of a transaction in a single document. These documents are designed for processing by mechanical and electronic equipment. If all of the required disclosures under § 226.8 should be placed on the face of such a document, the creditor will be unable to utilize conventional accounting and record keeping equipment because of the size of the resulting document. The question arises as to whether required disclosures may be made on the face and the reverse side of such a document.

Where a creditor elects to combine disclosures with the contract, security agreement, and evidence of a transaction in a single document, the disclosures required under § 226.8 shall, in accordance with § 226.6, be made on the face of that document, on its reverse side, or on both sides, provided that the amount of the finance charge and the annual percentage rate shall appear on the face of the document, and, if the reverse side is used, the printing on both sides of the document shall be equally clear and conspicuous, both sides shall contain the statement, "NOTICE: See other side for important information," and the place for the customer's signature shall be provided following the full content of the document.

4/22/69



BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

TRUTH IN LENDING

REGULATION



(12 CFR 226)
Effective July 1, 1969

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REGULATION



(12 CFR 226)
Effective July 1, 1969

TRUTH IN LENDING

REGULATION *

SECTION 226.1—AUTHORITY; SCOPE, PURPOSE, ETC.

(a) **Authority, scope, and purpose.** (1) This Part comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title I (Truth in Lending Act) and Title V (General Provisions) of the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146 et seq.) Except as otherwise provided herein, this Part applies to all persons who in the ordinary course of business regularly extend, or offer to extend, or arrange, or offer to arrange, for the extension of consumer credit as defined in paragraph (k) of § 226.2.

(2) This Part implements the Act, the purpose of which is to assure that every customer who has need for consumer credit is given meaningful information with respect to the cost of that credit which, in most cases, must be expressed in the dollar amount of finance charge, and as an annual percentage rate computed on the unpaid balance of the amount financed. Other relevant credit information must also be disclosed so that the customer may readily compare the various credit terms available to him from different sources and avoid the uninformed use of credit. This Part

also implements the provision of the Act under which a customer has a right in certain circumstances to cancel a credit transaction which involves a lien on his residence. Advertising of consumer credit terms must comply with specific requirements, and certain credit terms may not be advertised unless the creditor usually and customarily extends such terms. Neither the Act nor this Part is intended to control charges for consumer credit, or interfere with trade practices except to the extent that such practices may be inconsistent with the purpose of the Act.

(b) **Administrative enforcement.** (1) As set forth more fully in section 108 of the Act, administrative enforcement of the Act and this part with respect to certain creditors is assigned to the Comptroller of the Currency, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Director of the Bureau of Federal Credit Unions, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, and Board of Governors of the Federal Reserve System.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this part will be enforced by the Federal Trade Commission.

* This text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 226, cited as 12 CFR 226. The words "this Part", as used herein, mean Regulation Z.

(c) **Penalties and liabilities.** Section 112 of the Act provides for criminal liability for willful and knowing failure to comply with any requirement imposed under the Act and this Part, and section 130 of the Act provides for civil liability on the part of any creditor who fails to disclose any information required under Chapter 2 of the Act and under the corresponding provisions of this Part. Pursuant to section 108 of the Act, violations of the Act or this Part constitute violations of other Federal laws which may provide further penalties.

SECTION 226.2—DEFINITIONS AND RULES OF CONSTRUCTION

For the purposes of this Part, unless the context indicates otherwise, the following definitions and rules of construction apply:

(a) "Act" refers to the Truth in Lending Act (Title I of the Consumer Credit Protection Act).

(b) "Advertisement" means any commercial message in any newspaper, magazine, leaflet, flyer or catalog, on radio, television or public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag which is delivered or made available to a customer or prospective customer in any manner whatsoever.

(c) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(d) "Amount financed" means the amount of credit of which the customer will have the actual use determined in accordance with paragraphs (c)(7) and (d)(1) of § 226.8.

(e) "Annual percentage rate" means the annual percentage rate of finance charge determined in accordance with § 226.5.

(f) "Arrange for the extension of credit" means to provide or offer to provide consumer credit

which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit receives or will receive a fee, compensation, or other consideration for such service or has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the extension of credit. It does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction.

(g) "Billing cycle" means the time interval between regular periodic billing statement dates. Such intervals may be considered equal intervals of time unless a billing date varies more than 4 days from the regular date.

(h) "Board" refers to the Board of Governors of the Federal Reserve System.

(i) "Cash price" means the price at which the creditor offers, in the ordinary course of business, to sell for cash the property or services which are the subject of a consumer credit transaction. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements, and may include taxes to the extent imposed on the cash sale, but shall not include any other charges of the types described in § 226.4.

(j) "Comparative Index of Credit Cost" means the relative measure of the cost of credit under an open end credit account, computed in accordance with § 226.11, and is the expression of the "average effective annual percentage rate of return" and the "projected rate of return" which appear in section 127(a)(5) of the Act.

(k) "Consumer credit" means credit offered or extended to a natural person, in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes and for which either a finance charge is or may be imposed or which, pursuant to an agreement, is or may be payable in more than 4 instalments. "Consumer loan" is one type of "consumer credit."

(l) "Credit" means the right granted by a creditor to a customer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor. (See also paragraph (bb) of this section.)

(m) "Creditor" means a person who in the ordinary course of business regularly extends or

arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit.

(n) **"Credit sale"** means any sale with respect to which consumer credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(o) **"Customer"** means a natural person to whom consumer credit is offered or to whom it is or will be extended, and includes a comaker, endorser, guarantor, or surety for such natural person who is or may be obligated to repay the extension of consumer credit.

(p) **"Dwelling"** means a residential-type structure which is real property and contains one or more family housing units, or a residential condominium unit wherever situated.

(q) **"Finance charge"** means the cost of credit determined in accordance with § 226.4.

(r) **"Open end credit"** means consumer credit extended on an account pursuant to a plan under which (1) the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in instalments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(s) **"Organization"** means a corporation, trust, estate, partnership, cooperative, association, government, or governmental subdivision, agency, or instrumentality.

(t) **"Period"** means a day, week, month, or other subdivision of a year.

(u) **"Periodic rate"** means a percentage rate of finance charge which, under an open end credit plan, is or may be imposed by a creditor against a balance for a period. (See also § 226.5(a)(3).)

(v) **"Person"** means a natural person or an organization.

(w) **"Real property"** means property which is real property under the law of the State in which it is located.

(x) **"Real property transaction"** means an extension of credit in connection with which a security interest in real property is or will be retained or acquired.

(y) **"Residence"** means any real property in which the customer resides or expects to reside. The term includes a parcel of land on which the customer resides or expects to reside.

(z) **"Security interest"** and **"security"** mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

(aa) **"State"** means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(bb) Unless the context indicates otherwise, **"credit"** shall be construed to mean **"consumer credit,"** **"loan"** to mean **"consumer loan,"** and **"transaction"** to mean **"consumer credit transaction."**

(cc) A transaction shall be considered consummated at the time a contractual relationship is created between a creditor and a customer irrespective of the time of performance of either party.

(dd) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the intent of any provision of this part may be drawn from them.

SECTION 226.3—EXEMPTED TRANSACTIONS

This Part does not apply to the following:

(a) **Business or governmental credit.** Extensions of credit to organizations, including governments, or for business or commercial purposes, other than agricultural purposes.

(b) **Certain transactions in security or commodities accounts.** Transactions in securities or commodities accounts with a broker-dealer registered with the Securities and Exchange Commission.

(c) **Non-real property credit over \$25,000.** Credit transactions, other than real property transactions, in which the amount financed¹ exceeds \$25,000, or in which the transaction is pursuant to an express written commitment by the creditor to extend credit in excess of \$25,000.

(d) **Certain public utility bills.** Transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities, if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, reviewed by, or regulated by an agency of the Federal Government, a State, or a political subdivision thereof.

SECTION 226.4—DETERMINATION OF FINANCE CHARGE

(a) **General rule.** Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

(1) Interest, time price differential, and any amount payable under a discount or other system of additional charges.

(2) Service, transaction, activity, or carrying charge.²

(3) Loan fee, points, finder's fee, or similar charge.

(4) Fee for an appraisal, investigation, or credit report.

(5) Charges or premiums for credit life, accident, health, or loss of income insurance, written

¹For this purpose, the amount financed is the amount which is required to be disclosed under § 226.3 (c) (7), or (d) (1), as applicable, or would be so required if the transaction were subject to this Part.

²These charges include any charges imposed by the creditor in connection with a checking account to the extent that such charges exceed any charges the customer is required to pay in connection with such an account when it is not being used to extend credit.

in connection with³ any credit transaction unless

(i) the insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(ii) any customer desiring such insurance coverage gives specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance.

(6) Charges or premiums for insurance, written in connection with⁴ any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous, and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained.⁵

(7) Premium or other charge for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss.

(8) Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any part of that charge in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(b) **Itemized charges excludable.** If itemized and disclosed to the customer, any charges of the following types need not be included in the finance charge:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

³A policy of insurance owned by the customer, which is assigned to the creditor or otherwise made payable to the creditor to satisfy a requirement imposed by the creditor, is not insurance "written in connection with" a credit transaction if the policy was not purchased by the customer for the purpose of being used in connection with that extension of credit.

⁴A policy of insurance owned by the customer, which is assigned to the creditor or otherwise made payable to the creditor to satisfy a requirement imposed by the creditor, is not insurance "written in connection with" a credit transaction if the policy was not purchased by the customer for the purpose of being used in connection with that extension of credit.

⁵A creditor's reservation or exercise of the right to refuse to accept an insurer offered by the customer, for reasonable cause, does not require inclusion of the premium in the finance charge.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in subparagraph (1) of this paragraph which would otherwise be payable.

(3) Taxes not included in the cash price.

(4) License, certificate of title, and registration fees imposed by law.

(c) **Late payment, delinquency, default, and reinstatement charges.** A late payment, delinquency, default, reinstatement, or other such charge is not a finance charge if imposed for actual unanticipated late payment, delinquency, default or other such occurrence.

(d) **Overdraft charges.** A charge imposed by a bank for paying checks which overdraw or increase an overdraft in a checking account is not a finance charge unless the payment of such checks and the imposition of such finance charge were previously agreed upon in writing.

(e) **Excludable charges, real property transactions.** The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this Part, shall not be included in the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

(2) Fees for preparation of deeds, settlement statements, or other documents.

(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

(f) **Prohibited offsets.** Interest, dividends, or other income received or to be received by the customer on deposits or on investments in real or personal property in which a creditor holds a security interest shall not be deducted from the amount of the finance charge or taken into consideration in computing the annual percentage rate.

(g) **Demand obligations.** Obligations other than those debited to an open end credit account which are payable on demand shall be considered to have a maturity of one-half year for the purpose of computing the amount of the finance charge and the annual percentage rate, except that where such an obligation is alternatively payable upon a stated maturity, the stated maturity shall be used for the purpose of such computations.

(h) **Computation of insurance premiums.** If any insurance premium is required to be included as a part of the finance charge, the amount to be included shall be the premium for coverage extending over the period of time the creditor will require the customer to maintain such insurance. For this purpose, rates and classifications applicable at the time the credit is extended shall be applied over the full time during which coverage is required, unless the creditor knows or has reason to know that other rates or classifications will be applicable, in which case such other rates or classifications shall be used to the extent appropriate.

SECTION 226.5—DETERMINATION OF ANNUAL PERCENTAGE RATE

(a) **General rule—open end credit accounts.** The annual percentage rates for open end credit accounts shall be computed so as to permit disclosure with an accuracy at least to the nearest quarter of 1 per cent. Such rate or rates shall be determined in accordance with § 226.7(a)(4) for purposes of disclosure before opening an account, § 226.10(c)(4) for purposes of advertising, and in the following manner for purposes of disclosure on periodic statements:

(1) Where the finance charge is exclusively the product of the application of one or more periodic rates

(i) by multiplying each periodic rate by the number of periods in a year; or

(ii) at the creditor's option, if the finance charge is the result of the application of two or more periodic rates, by dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) Where the creditor imposes all periodic finance charges in amounts based on specified ranges or brackets of balances, the periodic rate

shall be determined by dividing the amount of the finance charge for the period by the amount of the median balance within the range or bracket of balances to which it is applicable, and the annual percentage rate shall be determined by multiplying that periodic rate (expressed as a percentage) by the number of periods in a year. Such ranges or brackets of balances shall be subject to the limitations prescribed in subdivision (iv) of paragraph (c) (2) of this section.

(3) Where the finance charge is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, and

(i) exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, by dividing the total finance charge for the billing cycle by the amount of the balance to which applicable and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year; or

(ii) does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, by multiplying each applicable periodic rate by the number of periods in a year, irrespective of the imposition of such minimum, fixed, or other charge.

(b) **General rule—other credit.** Except as otherwise provided in this section, the annual percentage rate applicable to any extension of credit, other than open end credit, shall be that nominal annual percentage rate determined as follows:

(1) In accordance with the actuarial method of computation so that it may be disclosed with an accuracy at least to the nearest quarter of 1 per cent. The mathematical equation and technical instructions for determining the annual percentage rate in accordance with the requirements of this paragraph are set forth in Supplement I to Regulation Z which is incorporated in this Part by reference. Supplement I to Regulation Z may be obtained from any Federal Reserve Bank or from the Board in Washington D.C., 20551, upon written request.

(2) At the option of the creditor, by application of the United States Rule so that it may be disclosed with an accuracy at least to the nearest quarter of 1 per cent. Under this rule, the finance charge is computed on the unpaid balance for the actual time the balance remains unpaid and

if the amount of a payment is insufficient to pay the accumulated finance charge, the unpaid accumulated finance charge continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the amount financed.

(c) **Charts and tables.** (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any such rate determined from these tables in accordance with instructions contained therein will comply with the requirements of this section. Volume I contains table FRB—100-M covering 1 to 60 monthly payments, table FRB—200-M covering 61 to 120 monthly payments, table FRB—300-M covering 121 to 480 monthly payments, and table FRB—100-W covering 1 to 104 weekly payments. Volume I also contains instructions for use of the tables in regular transactions and most irregular transactions which involve only odd first and final payments and odd first payment periods. Volume II contains factor tables and instructions for their use in connection with the tables in Volume I in the computation of annual percentage rates in any type of irregular payment or payment period transaction and in transactions involving multiple advances. Each volume is available from the Board in Washington, D.C., 20551, and the Federal Reserve Banks.

(2) Any chart or table other than the Board's Regulation Z Annual Percentage Rate Tables also may be utilized for the purpose of determining the annual percentage rate provided:

(i) It is prepared in accordance with the general rule set forth in paragraph (b) (1) or (2) of this section;

(ii) It bears the name and address of the person responsible for its production, an identification number assigned to it by that person which shall be the same for each chart or table so produced with like numerical content and configuration and, if prepared for use in connection with irregular transactions, an identification of the method of computation ("Actuarial" or "U.S. Rule");

(iii) Except as provided in subdivision (iv) of this subparagraph, it permits determination of the annual percentage rate to the nearest one-quarter of 1 per cent for the range of rates covered by the chart or table; and

(iv) If applicable to ranges or brackets of balances, it discloses the amount of the finance

charge and the annual percentage rate on the median balance within each range or bracket of balances where a creditor imposes the same finance charge for all balances within a specified range or bracket of balances, and provided further that if the annual percentage rate determined on the median balance understates the annual percentage rate determined on the lowest balance in that range or bracket by more than 8 per cent of the rate on the lowest balance, then the annual percentage rate for that range or bracket shall be computed upon any balance lower than the median balance within that range so that any understatement will not exceed 8 per cent of the rate on the lowest balance within that range or bracket of balances.

(3) In the event an error in disclosure of the amount of a finance charge or an annual percentage rate occurs because of a corresponding error in a chart or table acquired or produced in good faith by the creditor, that error in disclosure shall not, in itself, be considered a violation of this Part provided that upon discovery of the error, that creditor makes no further disclosure based on that chart or table and promptly notifies the Board or a Federal Reserve Bank in writing of the error and identifies the inaccurate chart or table by giving the name and address of the person responsible for its production and its identification number.

(d) **Minor irregularities.** In determining the annual percentage rate a creditor may, at his option, consider the payment irregularities set forth in this paragraph as if they were regular in amount or time, as applicable, provided that the transaction to which they relate is otherwise payable in equal instalments scheduled at equal intervals.

(1) If the period from the date on which the finance charge begins to accrue and the date the final payment is due is not less than 3 months in the case of weekly payments, 6 months in the case of biweekly or semimonthly payments, or 1 year in the case of monthly payments, either or both of the following:

(i) The amount of 1 payment other than any downpayment is not more than 50 per cent greater nor 50 per cent less than the amount of a regular payment; or

(ii) The interval between the date on which the finance charge begins to accrue and the date the first payment is due is not less than 5 days for

an obligation otherwise payable in weekly instalments, not less than 10 days for an obligation otherwise payable in biweekly or semimonthly instalments, or not less than 20 days for an obligation otherwise payable in monthly instalments.

(2) If the period from the date on which the finance charge begins to accrue and the date the final payment is due is less than 3 months in the case of weekly payments, 6 months in the case of biweekly or semimonthly payments, or 1 year in the case of monthly payments, either or both of the following:

(i) The amount of 1 payment other than any downpayment is not more than 25 per cent greater nor 25 per cent less than the amount of a regular payment; or

(ii) The interval between the date on which the finance charge begins to accrue and the date the first payment is due is not less than 6 days for an obligation otherwise payable in weekly instalments, not less than 12 days for an obligation otherwise payable in biweekly or semimonthly instalments, or not less than 25 days for an obligation otherwise payable in monthly instalments.

(e) **Approximation of annual percentage rate—other credit.** In an exceptional instance when circumstances may leave a creditor with no alternative but to determine an annual percentage rate applicable to an extension of credit other than open end credit by a method other than those prescribed in paragraphs (b) or (c) of this section, the creditor may utilize the constant ratio method of computation provided such use is limited to the exceptional instance and is not for the purpose of circumvention or evasion of the requirements of this Part. Any provision of State law authorizing or requiring the use of the constant ratio method or any method of computing a percentage rate other than those prescribed in paragraphs (b) and (c) of this section does not justify failure of the creditor to comply with the provisions of those paragraphs, as applicable.

SECTION 226.6—GENERAL DISCLOSURE REQUIREMENTS

(a) **Disclosures; general rule.** The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology

prescribed in applicable sections. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this Part. Except with respect to the requirements of § 226.10, all numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10 point type, .075 inch computer type, or elite size typewritten numerals, or shall be legibly handwritten.

(b) **Inconsistent State requirements.** With respect to disclosures required by this Part, State law is inconsistent with the requirements of the Act and this Part, within the meaning of section 111(a) of the Act, to the extent that it

(1) Requires a creditor to make disclosures different from the requirements of this Part with respect to form, content, terminology, or time of delivery;

(2) Requires disclosure of the amount of the finance charge determined in any manner other than that prescribed in § 226.4; or

(3) Requires disclosure of the annual percentage rate of the finance charge determined in any manner other than that prescribed in § 226.5.

(c) **Additional information.** At the creditor's option, additional information or explanations may be supplied with any disclosure required by this Part, but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required by this Part to be disclosed. Any creditor who elects to make disclosures specified in any provision of State law which, under paragraph (b) of this section, is inconsistent with the requirements of the Act and this Part may

(1) Make such inconsistent disclosures on a separate paper apart from the disclosures made pursuant to this Part, or

(2) Make such inconsistent disclosures on the same statement on which disclosures required by this Part are made; provided:

(i) All disclosures required by this Part appear separately and above any other disclosures,

(ii) Disclosures required by this Part are identified by a clear and conspicuous heading indicating that they are made in compliance with Federal law, and

(iii) All inconsistent disclosures appear separately and below a conspicuous demarcation line, and are identified by a clear and con-

spicuous heading indicating that the statements made thereafter are inconsistent with the disclosure requirements of the Federal Truth in Lending Act.

(d) **Multiple creditors; joint disclosure.** If there is more than one creditor in a transaction, each creditor shall be clearly identified and shall be responsible for making only those disclosures required by this Part which are within his knowledge and the purview of his relationship with the customer. If two or more creditors make a joint disclosure, each creditor shall be clearly identified. The disclosures required under paragraphs (b) and (c) of § 226.8 shall be made by the seller if he extends or arranges for the extension of credit. Otherwise disclosures shall be made as required under paragraphs (b) and (d) of § 226.8.

(e) **Multiple customers; disclosure to one.** In any transaction other than a transaction which may be rescinded under the provisions of § 226.9, if there is more than one customer, the creditor need furnish a statement of disclosures required by this Part to only one of them other than an endorser, comaker, guarantor, or a similar party.

(f) **Unknown information estimate.** If at the time disclosures must be made, an amount or other item of information required to be disclosed, or needed to determine a required disclosure, is unknown or not available to the creditor, and the creditor has made a reasonable effort to ascertain it, the creditor may use an estimated amount or an approximation of the information, provided the estimate or approximation is clearly identified as such, is reasonable, is based on the best information available to the creditor, and is not used for the purpose of circumventing or evading the disclosure requirements of this Part.

(g) **Effect of subsequent occurrence.** If information disclosed in accordance with this Part is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this Part.*

*Such acts, occurrences, or agreements include the failure of the customer to perform his obligations under the contract and such actions by the creditor as may be proper to protect his interests in such circumstances. Such failure may result in the liability of the customer to pay delinquency charges, collection costs, or expenses of the creditor for perfection or acquisition of any security interest or amounts advanced by the creditor on behalf of the customer in connection with insurance, repairs to or preservation of collateral.

(h) **Overstatement.** The disclosure of the amount of the finance charge or a percentage which is greater than the amount of the finance charge or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part: *Provided*, That the overstatement is not for the purpose of circumvention or evasion of disclosure requirements.

(i) **Preservation and inspection of evidence of compliance.** Evidence of compliance with the requirements imposed under this Part, other than advertising requirements under § 226.10, shall be preserved by the creditor for a period of not less than 2 years after the date each disclosure is required to be made. Each creditor shall, when directed by the appropriate administrative enforcement authority designated in section 108 of the Act, permit that authority or its duly authorized representative to inspect its relevant records and evidence of compliance with this Part.

(j) **Percentage rate as dollars per hundred.** Prior to January 1, 1971, any rate required under this Part to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars using the term "dollars finance charge per year per \$100 of unpaid balance." (For example, an add-on finance charge of 4 per cent per year on an obligation payable in 36 equal monthly instalments is equivalent to an annual percentage rate, rounded to the nearest quarter of 1 per cent, of 7.50 per cent which may be stated as "\$7.50 finance charge per year per \$100 of unpaid balance.")

(k) **Transition period.** Any creditor who can demonstrate that he has taken bona fide steps, prior to July 1, 1969, to obtain printed forms which are necessary to comply with requirements of this Part may, until such forms are received but in no event later than December 31, 1969, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraph (b) of § 226.9: *Provided*, That such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously.

SECTION 226.7—OPEN END CREDIT ACCOUNTS—SPECIFIC DISCLOSURES

(a) **Opening new account.** Before the first transaction is made on any open end credit account, the creditor shall disclose to the customer in a single written statement, which the customer may retain, in terminology consistent with the requirements of paragraph (b) of this section, each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including an explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the method of determining any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects, the Comparative Index of Credit Cost in accordance with § 226.11.

(6) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended on the account, and a description or identification of the type of the interest or interests which may be so retained or acquired.

(8) The minimum periodic payment required.

(b) **Periodic statements required.** Except in the case of an account which the creditor deems to be uncollectable or with respect to which delinquency collection procedures have been instituted, the creditor of any open end credit account shall mail or deliver to the customer, for each billing cycle at the end of which there is an outstanding debit balance in excess of \$1 in that account or with respect to which a finance charge is imposed, a statement or statements which the customer may retain, setting forth in accordance with paragraph (c) of this section each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance."

(2) The amount and date of each extension of credit or the date such extension of credit is debited to the account during the billing cycle and, unless previously furnished, a brief identification⁷ of any goods or services purchased or other extension of credit.

(3) The amounts credited to the account during the billing cycle for payments, using the term "payments," and for other credits including returns, rebates of finance charges, and adjustments, using the term "credits," and unless previously furnished, a brief identification⁸ of each of the items included in such other credits.

(4) The amount of any finance charge, using the term "finance charge," debited to the account during the billing cycle, itemized and identified to show the amounts, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge, such as a minimum, fixed, check service, transaction, activity, or similar charge,⁹ using appropriate descriptive terminology.

(5) Each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not applied during the billing cycle), and the range of balances to which it is applicable.

(6) The annual percentage rate or rates determined under § 226.5(a), using the term "annual percentage rate" (or "rates"), and, where there is more than one rate, the amount of the balance to which each rate is applicable. Where the creditor of the open end credit account imposes finance charges with respect to specific transactions during the billing cycle, such charges shall be combined with all other finance charges imposed during the billing cycle, and the annual percentage rate to be disclosed shall be determined by:

⁷ Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

⁸ Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

⁹ These charges include any charges imposed by the creditor for the issuance, payment, or handling of checks, for account maintenance or otherwise, to the extent that such charges exceed any similar charges the customer is required to pay when an account is not being used to extend credit.

(i) Dividing the sum of all of the finance charges imposed during the billing cycle by the sum of the balances to which the periodic rates apply (or by the average of daily balances if a daily periodic rate is used), plus the sum of the amounts financed to which the specific transaction charges apply, and

(ii) Multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(7) If the creditor so elects, the Comparative Index of Credit Cost in accordance with § 226.11.

(8) The balance on which the finance charge was computed, and a statement of how that balance was determined. If the balance is determined without first deducting all credits during the billing cycle, that fact and the amount of such credits shall also be disclosed.

(9) The closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," accompanied by the statement of the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges.

(c) **Location of disclosures.** The disclosures required by paragraph (b) of this section shall be made on the face of the periodic statement, on its reverse side, or on the periodic statement supplemented by separate statement forms provided they are enclosed together and delivered to the customer at the same time, and further provided that

(1) The disclosure required by paragraph (b)(1) of this section, the amounts or respective totals of the amounts required to be disclosed under paragraph (b)(2), (3), and (4) of this section, and the disclosure required under paragraph (b)(6) and (9) of this section shall appear on the face of the periodic statement. If the amounts and dates of the charges and credits required to be disclosed under paragraph (b)(2) and (3) of this section are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement or separate slips which shall accompany the periodic statement and identify each charge and credit and show the date and amount thereof. If the disclosures required under paragraph (b)(4) are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement which shall accompany the periodic statement.

(2) The disclosures required by paragraph (b)(5)

and (6) of this section and a reference to the amounts required to be disclosed under paragraph (b)(4) and (8) of this section, if not disclosed together on the face or the reverse side of the periodic statement, shall appear together on the face of a single supplemental statement which shall accompany the periodic statement.

(3) The face of the periodic statement shall contain one of the following notices, as applicable: "NOTICE: See reverse side for important information" or "NOTICE: See accompanying statement(s) for important information" or "NOTICE: See reverse side and accompanying statement(s) for important information;" and

(4) The disclosures shall not be separated so as to confuse or mislead the customer or obscure or detract attention from the information required to be disclosed.

(d) **Finance charge imposed at time of transaction.** Any creditor, other than the creditor of the open end credit account, who imposes a finance charge at the time of honoring a customer's credit card, any other device, or form of identification for a purchase of property or services or for a cash advance to be debited to the customer's open end credit account shall make the disclosures required under paragraphs (b)(2) and (d) of § 226.8, *Credit other than open end—specific disclosures*, at the time of that transaction, and the annual percentage rate to be disclosed shall be determined by dividing the amount of the finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12. If disclosure is made under this paragraph, the creditor of the open end credit account need make no further disclosure with respect to the finance charge on that transaction.

(e) **Change in terms.** If any change is to be made in terms of an open end credit account plan previously disclosed to the customer, the creditor shall mail or deliver to the customer written disclosure of such proposed change not less than 30 days prior to the effective date of such change or 30 days prior to the beginning of the billing cycle within which such change will become effective, whichever is the earlier date.

(f) **Open end credit accounts existing on July 1, 1969.** In the case of any open end credit account in existence and in which a balance remains unpaid on July 1, 1969, and which balance is deemed to be collectible and not subject to delinquency

collection procedures, the items described in paragraph (a) of this section, to the extent applicable, shall be disclosed in a notice mailed or delivered to the customer not later than July 31, 1969. If a customer subsequently utilizes such an account in existence on July 1, 1969, in which no balance remained unpaid on that date, and a notice required by paragraph (a) of this section has not previously been furnished that customer, then such notice shall be mailed or delivered to that customer before or with the next billing on that account.

SECTION 226.8—CREDIT OTHER THAN OPEN END—SPECIFIC DISCLOSURES

(a) **General rule.** Any creditor when extending credit other than open end credit shall, in accordance with § 226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. Except as provided in paragraphs (g) and (h) of this section, such disclosures shall be made before the transaction is consummated. At the time disclosures are made, the creditor shall furnish the customer with a duplicate of the instrument or a statement by which the required disclosures are made and on which the creditor is identified. All of the disclosures shall be made together on either

(1) The note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(2) One side of a separate statement which identifies the transaction.

(b) **Disclosures in sale and nonsale credit.** In any transaction subject to this section, the following items, as applicable, shall be disclosed:

(1) The date on which the finance charge begins to accrue if different from the date of the transaction.

(2) The finance charge expressed as an annual percentage rate, using the term "annual percentage rate," except in the case of a finance charge

(i) which does not exceed \$5 and is applicable to an amount financed not exceeding \$75, or

(ii) which does not exceed \$7.50 and is applicable to an amount financed exceeding \$75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate, nor may any other percentage rate be disclosed if none

is stated in reliance upon subdivisions (i) or (ii) of this subparagraph.

(3) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling and except in the case of a sale of a dwelling, the sum of such payments using the term, "total of payments."¹⁰ If any payment is more than twice the amount of an otherwise regularly scheduled equal payment, the creditor shall identify the amount of such payment by the term "balloon payment" and shall state the conditions, if any, under which that payment may be refinanced if not paid when due.

(4) The amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.

(5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

(6) A description of any penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation

¹⁰ The disclosures required by this sentence need not be made with respect to interim student loans made pursuant to federally insured student loan programs under Public Law 89-329, Title IV Part B of the Higher Education Act of 1965, as amended.

(such as a real estate mortgage) with an explanation of the method of computation of such penalty and the conditions under which it may be imposed.

(7) Identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer.

(c) **Credit sales.** In the case of a credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall be disclosed:

(1) The cash price of the property or service purchased, using the term "cash price."

(2) The amount of the downpayment itemized, as applicable, as downpayment in money, using the term "cash downpayment," downpayment in property, using the term "trade-in" and the sum, using the term "total downpayment."

(3) The difference between the amounts described in subparagraphs (1) and (2) of this paragraph, using the term "unpaid balance of cash price."

(4) All other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge.

(5) The sum of the amounts determined under subparagraphs (3) and (4) of this paragraph, using the term "unpaid balance."

(6) Any amounts required to be deducted under paragraph (e) of this section using, as applicable, the terms "prepaid finance charge" and "required deposit balance," and, if both are applicable, the total of such items using the term "total prepaid finance charge and required deposit balance."

(7) The difference between the amounts determined under subparagraphs (5) and (6) of this paragraph, using the term "amount financed."

(8) Except in the case of a sale of a dwelling:

(i) The total amount of the finance charge, with description of each amount included, using the term "finance charge," and

(ii) The sum of the amounts determined under subparagraphs (1), (4), and (8)(i) of this paragraph, using the term "deferred payment price."

(d) **Loans and other nonsale credit.** In the case of a loan or extension of credit which is not a

credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall be disclosed:

(1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed."

(2) Any amount referred to in paragraph (e) of this section required to be excluded from the amount in subparagraph (1) of this paragraph, using, as applicable, the terms "prepaid finance charge" and "required deposit balance," and, if both are applicable, the total of such items using the term, "total prepaid finance charge and required deposit balance."

(3) Except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge,¹² with description of each amount included, using the term "finance charge."

(e) **Finance charge payable separately or withheld; required deposit balances.** The following amounts shall be disclosed and deducted in a credit sale in accordance with paragraph (c)(6) of this section, and in other extensions of credit shall be excluded from the amount disclosed under paragraph (d)(1) of this section, and shall be disclosed in accordance with paragraph (d)(2) of this section:

(1) Any finance charge paid separately, in cash or otherwise, directly or indirectly to the creditor or with the creditor's knowledge to another person, or withheld by the creditor from the proceeds of the credit extended.¹³

(2) Any deposit balance or any investment which the creditor requires the customer to make, maintain, or increase in a specified amount or proportion as a condition to the extension of credit except:

¹² The disclosure required by this subparagraph need not be made with respect to interim student loans made pursuant to federally insured student loan programs under Public Law 89-329, Title IV Part B of the Higher Education Act of 1965, as amended.

¹³ Finance charges deducted or excluded as provided by this paragraph shall, nevertheless, be included in determining the finance charge under § 226.4.

(i) An escrow account under paragraph (e)(3) of § 226.4,

(ii) A deposit balance which will be wholly applied toward satisfaction of the customer's obligation in the transaction,

(iii) A deposit balance or investment which was in existence prior to the extension of credit and which is offered by the customer as security for that extension of credit, and

(iv) A deposit balance or investment which was acquired or established from the proceeds of an extension of credit made for that purpose upon written request of the customer.

(f) **First lien to finance construction of dwelling.**

In any case where a first lien or equivalent security interest in real property is retained or acquired by a creditor in connection with the financing of the initial construction of a dwelling, or in connection with a loan to satisfy that construction loan and provide permanent financing of that dwelling, whether or not the customer previously owned the land on which that dwelling is to be constructed, such security interest shall be considered a first lien against that dwelling to finance the purchase of that dwelling.

(g) **Orders by mail or telephone.** If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or written communication without personal solicitation, the disclosures required under this section may be made any time not later than the date the first payment is due, provided:

(1) In the case of credit sales, the cash price, the downpayment, the finance charge, the deferred payment price, the annual percentage rate, and the number, frequency, and amount of payments are set forth in or are determinable from the creditor's catalog or other printed material distributed to the public; or

(2) In the case of loans or other extensions of credit, the amount of the loan, the finance charge, the total scheduled payments, the number, frequency, and amount of payments, and the annual percentage rate for representative amounts or ranges of credit are set forth in or are determinable from the creditor's printed material distributed to the public, in the contract of loan, or in other printed material delivered or made available to the customer.

(h) **Series of sales.** If a credit sale is one of a series of transactions made pursuant to an agree-

ment providing for the addition of the amount financed plus the finance charge for the current sale to an existing outstanding balance, then the disclosures required under this section for the current sale may be made at any time not later than the date the first payment for that sale is due, provided:

(1) The customer has approved in writing both the annual percentage rate or rates and the method of treating any unearned finance charge on an existing outstanding balance in computing the finance charge or charges; and

(2) The creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sale price including any finance charges attributable thereto. For the purposes of this subparagraph, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

(i) **Advances under loan commitments.** If a loan is one of a series of advances made pursuant to a written agreement under which a creditor is or may be committed to extend credit to a customer up to a specified amount, and the customer has approved in writing the annual percentage rate or rates, the method of computing the finance charge or charges, and any other terms, the agreement shall be considered a single transaction, and the disclosures required under this section at the creditor's option need be made only at the time the agreement is executed.

(j) **Refinancing, consolidating, or increasing.** If any existing extension of credit is refinanced, or two or more existing extensions of credit are consolidated, or an existing obligation is increased, such transaction shall be considered a new transaction subject to the disclosure requirements of this Part. For the purpose of such disclosure, any unearned portion of the finance charge which is not credited to the existing obligation shall be added to the new finance charge and shall not be included in the new amount financed. Any increase in an existing obligation to reimburse the creditor for undertaking the customer's obligation in perfecting, protecting or preserving the security shall not be considered a new transaction subject to this Part. Any advance for agricultural purposes made under an open end real estate mortgage or similar lien shall not be considered a new trans-

action subject to the disclosure requirements of this section, provided:

(1) The maturity of the advance does not exceed 2 years;

(2) No increase is made in the annual percentage rate previously disclosed; and

(3) All disclosures required by this Part were made at the time the security interest was acquired by the creditor or at any time prior to the first advance made on or following the effective date of this part.

(k) **Assumption of an obligation.** Any creditor who accepts a subsequent customer as an obligor under an existing obligation shall make the disclosures required by this part to that customer before he becomes so obligated. If the obligation so assumed is secured by a first lien or equivalent security interest on a dwelling, and the assumption is made for the subsequent customer to acquire that dwelling, that obligation shall be considered a loan made to finance the purchase of that dwelling.

(l) **Deferrals or extensions.** In the case of an obligation other than an obligation upon which the amount of the finance charge is determined by the application of a percentage rate to the unpaid balance, if the creditor imposes a charge or fee for deferral or extension, the creditor shall disclose to the customer

(1) The amount deferred or extended;

(2) The date to which, or the time period for which payment is deferred or extended; and

(3) The amount of the charge or fee for the deferral or extension.

(m) **Series of single payment obligations.** Any extension of credit involving a series of single payment obligations shall be considered a single transaction subject to the disclosure requirements of this Part.

(n) **Permissible periodic statements.** If a creditor transmits a periodic billing statement²² other than a delinquency notice, payment coupon book, or payment passbook, or a statement, billing, or advice relating exclusively to amounts to be paid by the customer as escrows for payment of taxes, insurance, and water, sewer, and land rents, it shall be in a form which the customer may retain and shall set forth

²² Any statement, notice, or reminder of payment due on any transaction payable in instalments which is mailed or delivered periodically to the customer in advance of the due date of the instalment shall be a periodic billing statement for the purpose of this paragraph.

- (1) The annual percentage rate or rates; and
- (2) The date by which, or the period, if any, within which payment must be made in order to avoid late payment or delinquency charges.

(o) **Discount for prompt payment.** Except as provided under § 226.3(d), the amount of any discount allowed for payment of a single payment obligation on or before a specified date, or charge for delaying payment after a specified date, shall be disclosed on the billing statement as a finance charge imposed on the least amount payable in satisfaction of the obligation (amount financed) for the period of time between the specified date and the due date of the obligation, or in the absence of a designated due date, the date the billing cycle ends. Except as provided in paragraph (b)(2) of this section, each such billing statement shall, in addition to stating the amount of that "finance charge," using that term, state the "annual percentage rate," using that term, computed so that it may be disclosed with an accuracy to the nearest quarter of 1 per cent and determined by (1) dividing the amount of the finance charge by the amount financed; (2) dividing the quotient so obtained by the number of days between the specified date and the due date of the obligation, or in the absence of a designated due date, the date the billing cycle ends; and (3) multiplying the quotient so obtained (expressed as a percentage) by 365. (For example, a \$1,000 purchase of grain, subject to terms of 2%/10 days, net 30 days, results in a "finance charge" of \$20 and an amount financed \$980 for a period of 20 days. The "annual percentage rate" is 37.24% which may be rounded to 37.25% or 37¼%.)

SECTION 226.9—RIGHT TO RESCIND CERTAIN TRANSACTIONS

(a) **General rule.** Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day¹⁴ following the date of con-

¹⁴ For the purposes of this section, a business day is any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving, and Christmas.

summation of that transaction or the date of delivery of the disclosures required under this section and all other material disclosures required under this Part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so. Notification by mail shall be considered given at the time mailed; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to the creditor's designated place of business.

(b) **Notice of opportunity to rescind.** Whenever a customer has the right to rescind a transaction under paragraph (a) of this section, the creditor shall give notice of that fact to the customer by furnishing the customer with two copies of the notice set out below, one of which may be used by the customer to cancel the transaction. Such notice shall be printed in capital and lower case letters of not less than 12 point bold-faced type on one side of a separate statement which identifies the transaction to which it relates. Such statement shall also set forth the entire paragraph (d) of this section, "Effect of rescission." If such paragraph appears on the reverse side of the statement, the face of the statement shall state: "See reverse side for important information about your right of rescission." Before furnishing copies of the notice to the customer, the creditor shall complete both copies with the name of the creditor, the address of the creditor's place of business, the date of consummation of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the customer may give notice of cancellation.

Notice to customer required by Federal law:

You have entered into
(date)

a transaction on _____ which may result in a lien, mortgage, or other security interest on your home. You have a legal right under Federal law to cancel this transaction, if you desire to do so, without any penalty or obligation within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage, or other security interest on your home arising from this transaction

is automatically void. You are also entitled to receive a refund of any downpayment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying

(Name of creditor)

at (Address of creditor's place of business) by mail or telegram sent not later than midnight of

(date)

You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby cancel this transaction.

(date)

(customer's signature)

(c) **Delay of performance.** Except as provided in paragraph (e) of this section, the creditor in any transaction subject to this section shall not perform, or cause or permit the performance of, any of the following actions until after the rescission period has expired and he has reasonably satisfied himself that the customer has not exercised his right of rescission:

- (1) Disburse any money other than in escrow;
- (2) Make any physical changes in the property of the customer;
- (3) Perform any work or service for the customer; or
- (4) Make any deliveries to the residence of the customer if the creditor has retained or will acquire a security interest other than one arising by operation of law.

(d) **Effect of rescission.** When a customer exercises his right to rescind under paragraph (a) of this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under

this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within 10 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

(e) **Waiver of right of rescission.** A customer may modify or waive his right to rescind a transaction subject to the provisions of this section provided:

(1) The extension of credit is needed in order to meet a bona fide immediate personal financial emergency of the customer;

(2) The customer has determined that a delay of 3 business days in performance of the creditor's obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the customer owns or for which he is responsible; and

(3) The customer furnishes the creditor with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving his right of rescission. The use of printed forms for this purpose is prohibited.

(f) **Joint ownership.** For the purpose of this section, "customer" shall include two or more customers where joint ownership is involved, and the following shall apply:

(1) The right of rescission of the transaction may be exercised by any one of them, in which case the effect of rescission in accordance with paragraph (d) of this section applies to all of them; and

(2) Any waiver of the right of rescission provided in paragraph (f) of this section is invalid unless signed by all of them.

(g) **Exceptions to general rule.** This section does not apply to:

(1) The creation, retention, or assumption of a first lien or equivalent security interest to finance the acquisition of a dwelling in which the customer resides or expects to reside.

(2) A security interest which is a first lien retained or acquired by a creditor in connection with

the financing of the initial construction of the residence of the customer, or in connection with a loan committed prior to completion of the construction of that residence to satisfy that construction loan and provide permanent financing of that residence, whether or not the customer previously owned the land on which that residence is to be constructed.

(3) Any lien by reason of its subordination at any time subsequent to its creation, if that lien was exempt from the provisions of this section when it was originally created.

(4) Any advance for agricultural purposes made pursuant to paragraph (j) of § 226.8 under an open end real estate mortgage or similar lien, provided the disclosure required under paragraph (b) of this section was made at the time the security interest was acquired by the creditor or at any time prior to the first advance made on or following the effective date of this Part.

SECTION 226.10—ADVERTISING CREDIT TERMS

(a) **General rule.** No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state

(1) That a specific amount of credit or installment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or instalments for that period and in that amount; or

(2) That no downpayment or that a specified downpayment will be accepted in connection with any extension of credit, unless the creditor usually and customarily accepts or will accept downpayments in that amount.

(b) **Catalogs and multi-page advertisements.** If a catalog or other multiple-page advertisement sets forth or gives information in sufficient detail to permit determination of the disclosures required by this section in a table or schedule of credit terms, such catalog or multiple-page advertisement shall be considered a single advertisement provided:

(1) The table or schedule and the disclosures made therein are set forth clearly and conspicuously, and

(2) Any statement of credit terms appearing in any place other than in that table or schedule of credit terms clearly and conspicuously refers to the page or pages on which that table or schedule

appears, unless that statement discloses all of the credit terms required to be stated under this section. For the purpose of this subparagraph, cash price is not a credit term.

(c) **Advertising of open end credit.** No advertisement to aid, promote, or assist directly or indirectly the extension of open end credit may set forth any of the terms described in paragraph (a) of § 226.7, the Comparative Index of Credit Cost, or that no downpayment, a specified downpayment, or a specified periodic payment is required or any of the following items unless it also clearly and conspicuously sets forth all the following items in terminology prescribed under paragraph (b) of § 226.7:

(1) An explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the determination of any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(6) The minimum periodic payment required.

(d) **Advertising of credit other than open end.** No advertisement to aid, promote, or assist directly or indirectly any credit sale including the sale of residential real estate, loan, or other extension of credit, other than open end credit, subject to the provisions of this Part, shall state

(1) The rate of a finance charge unless it states the rate of that charge expressed as an "annual percentage rate," using that term;

(2) The amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless it states all of the following items in terminology prescribed under § 226.8:

(i) the cash price or the amount of the loan, as applicable.

(ii) the amount of the downpayment required or that no downpayment is required, as applicable.

(iii) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(iv) the amount of the finance charge expressed as an annual percentage rate. The exemptions from disclosure of an annual percentage rate permitted in paragraph (b)(2) of § 226.8 shall not apply to this subdivision.

(v) Except in the case of the sale of a dwelling or a loan secured by a first lien on a dwelling to purchase that dwelling, the deferred payment price or the sum of the payments, as applicable.

SECTION 226.11—COMPARATIVE INDEX OF CREDIT COST FOR OPEN END CREDIT

(a) **General rule.** Any creditor who elects to disclose the Comparative Index of Credit Cost on open end credit accounts

(1) Shall compute the Comparative Index of Credit Cost in accordance with paragraph (b) of this section.

(2) Shall recompute the Comparative Index of Credit Cost in accordance with paragraph (b) of this section based upon any new open end credit account terms to be adopted and shall disclose the new Comparative Index of Credit Cost in accordance with paragraph (c)(2) of this section concurrently with the notice required under paragraph (c) of § 226.7.

(3) Shall, when making such disclosure under the provisions of subparagraphs (a)(5) and (b)(7) of § 226.7, make the disclosure to all open end credit account customers; and

(4) Shall not utilize such disclosure so as to mislead, or confuse the customer or contradict, obscure, or detract attention from the required disclosures.

(b) **Computation of Comparative Index of Credit Cost.** The Comparative Index of Credit Cost for each open end credit plan shall be computed by applying the creditor's terms of that plan to the following hypothetical factors:

(1) A single transaction in the amount of \$100 is debited on the first day of a billing cycle to an open end credit account having no previous balance.

(2) The creditor imposes all finance charges including periodic, fixed, minimum or other charges applicable to such account in amounts and on dates consistent with his policy of imposing such charges upon open end credit accounts.

(3) The exact amount of the required minimum periodic payment is paid on the last day of each subsequent and successive billing cycle until the amount of the single transaction, together with applicable finance charges, is paid in full.

(4) The Comparative Index of Credit Cost shall be expressed and disclosed as a percentage accurate to the nearest quarter of 1 per cent and shall be determined by dividing the total amount of the finance charges imposed by the sum of the daily balances and multiplying the quotient so obtained (expressed as a percentage) by 365.

(c) **Form of disclosure.** Any creditor who elects to disclose the Comparative Index of Credit Cost shall:

(1) Make the disclosure in the form of the following statement: "Our Comparative Index of Credit Cost under the terms of our open end credit account plan is ___% per year, computed on the basis of a single transaction of \$100 debited on the first day of a billing cycle to an account having no previous balance, and paid in required minimum consecutive instalments on the last day of each succeeding billing cycle until the transaction and all finance charges are paid in full. The actual percentage cost of credit on your account may be higher or lower depending on the dates and amounts of charges and payments."

(2) Disclose any newly computed Comparative Index of Credit Cost in the form of the statement prescribed in subparagraph (1) of this paragraph, except that the statement shall be preceded by the words "Effective as of (date) ," and the words "will be" shall be substituted for the word "is" in the second line of the statement.

SECTION 226.12—EXEMPTION OF CERTAIN STATE REGULATED TRANSACTIONS

(a) **Exemption for State regulated transactions.** In accordance with the provisions of Supplement II to Regulation Z (§ 226.12—Supplement), any State may make application to the Board for exemption of any class of transactions within that State from the requirements of Chapter 2 of the Act and the corresponding provisions of this Part: *Provided, That*

(1) Under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed under Chapter 2 of the Act and the corresponding provisions of this Part; and

(2) There is adequate provision for enforcement.

(b) **Procedures and criteria.** On or before July 1, 1969, the Board will promulgate and publish

Supplement II to Regulation Z (§ 226.12—Supplement) in which will be set forth, as established by the Board, the procedures and criteria under which any State may apply for the determination provided for in paragraph (a) of this section. Upon publication of Supplement II of Regulation Z, application may be made to the Board for such determination.

STATUTORY APPENDIX

Titles I and V of Act of May 29, 1968

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

TITLE I—CONSUMER CREDIT COST DISCLOSURE

Chapter	Section
1. GENERAL PROVISIONS.....	101
2. CREDIT TRANSACTIONS.....	121
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CHAPTER 1—GENERAL PROVISIONS

Sec.

- 101. Short title.
- 102. Findings and declaration of purpose.
- 103. Definitions and rules of construction.
- 104. Exempted transactions.
- 105. Regulations.
- 106. Determination of finance charge.
- 107. Determination of annual percentage rate.
- 108. Administrative enforcement.
- 109. Views of other agencies.
- 110. Advisory committee.
- 111. Effect on other laws.
- 112. Criminal liability for willful and knowing violation.
- 113. Penalties inapplicable to governmental agencies.
- 114. Reports by Board and Attorney General.

§ 101. Short title

This title may be cited as the Truth in Lending Act.

§ 102. Findings and declaration of purpose

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare

more readily the various credit terms available to him and avoid the uninformed use of credit.

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this title apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

(g) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes.

(i) The term "open end credit plan" refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(j) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(k) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

(l) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

§ 104. Exempted transactions

This title does not apply to the following:

(1) Credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) Credit transactions, other than real property transactions, in which the total amount to be financed exceeds \$25,000.

(4) Transactions under public utility tariffs, if the Board determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

§ 105. Regulations

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

§ 106. Determination of finance charge

(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit,

including any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(b) Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insur-

ance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Taxes.

(4) Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Board by regulation.

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of a deed, settlement statement, or other documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

§ 107. Determination of annual percentage rate

(a) The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Board,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Board as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Board determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Board may by regulation require.

(c) The annual percentage rate may be rounded to the nearest quarter of 1 per centum for credit transactions payable in substantially equal installments when a creditor determines the total finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Board.

(d) The Board may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) by not more than such tolerances as the Board may allow. The Board may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (c) or (d), the Board may authorize other reasonable tolerances.

(f) Prior to January 1, 1971, any rate required under this title to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars.

§ 108. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act, in the case of

(A) national banks, by the Comptroller of the Currency.

(B) member banks of the Federal Re-

serve System (other than national banks), by the Board.

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) the Federal Credit Union Act, by the Director of the Bureau of Federal Credit Unions with respect to any Federal credit union.

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation

of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

§ 109. Views of other agencies

In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of creditors subject to this title.

§ 110. Advisory committee

The Board shall establish an advisory committee to advise and consult with it in the exercise of its functions under this title. In appointing the members of the committee, the Board shall seek to achieve a fair representation of the interests of sellers of merchandise on credit, lenders, and the public. The committee shall meet from time to time at the call of the Board, and members thereof shall be paid transportation expenses and not to exceed \$100 per diem.

§ 111. Effect on other laws

(a) This title does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this title or regulations thereunder, and then only to the extent of the inconsistency.

(b) This title does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this

title extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

(c) In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this title in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Except as specified in sections 125 and 130, this title and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

§ 112. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this title or any regulation issued thereunder,

(2) uses any chart or table authorized by the Board under section 107 in such a manner as to consistently understate the annual percentage rate determined under section 107 (a)(1)(A), or

(3) otherwise fails to comply with any requirement imposed under this title, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

§ 113. Penalties inapplicable to governmental agencies

No civil or criminal penalty provided under this title for any violation thereof may be imposed upon the United States or any agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

§ 114. Reports by Board and Attorney General

Not later than January 3 of each year after 1969, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements imposed under this title is being achieved.

[U.S.C., title 15, sec. 1601-1613.]

CHAPTER 2—CREDIT TRANSACTIONS

Sec.

- 121. General requirement of disclosure.
- 122. Form of disclosure; additional information.
- 123. Exemption for State-regulated transactions.
- 124. Effect of subsequent occurrence.
- 125. Right of rescission as to certain transactions.
- 126. Content of periodic statements.
- 127. Open end consumer credit plans.
- 128. Sales not under open end credit plans.
- 129. Consumer loans not under open end credit plans.
- 130. Civil liability.
- 131. Written acknowledgment as proof of receipt.

§ 121. General requirement of disclosure

(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this chapter.

(b) If there is more than one obligor, a creditor need not furnish a statement of information required under this chapter to more than one of them.

§ 122. Form of disclosure; additional information

(a) Regulations of the Board need not require that disclosures pursuant to this chapter be made in the order set forth in this chapter, and may permit the use of terminology different from that employed in this chapter if it conveys substantially the same meaning.

(b) Any creditor may supply additional information or explanations with any disclosures required under this chapter.

§ 123. Exemption for State-regulated transactions.

The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement.

§ 124. Effect of subsequent occurrence

If information disclosed in accordance with this chapter is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter.

§ 125. Right of rescission as to certain transactions

(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within ten days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

(c) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this title by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

§ 126. Content of periodic statements

If a creditor transmits periodic statements in connection with any extension of consumer credit other than under an open end consumer credit plan, then each of those statements shall set forth each of the following items:

(1) The annual percentage rate of the total finance charge.

(2) The date by which, or the period (if any) within which, payment must be made in order to avoid additional finance charges or other charges.

(3) Such of the items set forth in section 127(b) as the Board may by regulation require as appropriate to the terms and conditions under which the extension of credit in question is made.

§ 127. Open end consumer credit plans

(a) Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects,

(A) the average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

(B) whenever circumstances are such that the computation of a rate under subparagraph (A) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan.

The Board shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph.

(6) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.

(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and, if a purchase was involved, a brief identification (unless previously furnished) of the goods or services purchased.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage

rate (determined under section 107(a)(2)) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 107(a)(2)), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) At the election of the creditor, the average effective annual percentage rate of return (or the projected rate) under the plan as prescribed in subsection (a)(5).

(8) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(9) The outstanding balance in the account at the end of the period.

(10) The date by which, or the period (if any) within which, payment must be made to avoid additional finance charges.

(c) In the case of any open end consumer credit plan in existence on the effective date of this subsection, the items described in subsection (a), to the extent applicable, shall be disclosed in a notice mailed or delivered to the obligor not later than thirty days after that date.

§ 128. Sales not under open end credit plans

(a) In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

(1) The cash price of the property or service purchased.

(2) The sum of any amounts credited as downpayment (including any trade-in).

(3) The difference between the amount re-

ferred to in paragraph (1) and the amount referred to in paragraph (2).

(4) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(5) The total amount to be financed (the sum of the amount described in paragraph (3) plus the amount described in paragraph (4)).

(6) Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable.

(7) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed \$5 and is applicable to an amount financed not exceeding \$75, or

(B) which does not exceed 7.50 and is applicable to an amount financed exceeding \$75.

A creditor may not divide a consumer credit sale into two or more sales to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(8) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness.

(9) The default, delinquency, or similar charges payable in the event of late payments.

(10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this chapter, the disclosures required under subsection (a) shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser.

(c) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the deferred payment price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a)

may be made at any time not later than the date the first payment is due.

(d) If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

§ 129. Consumer loans not under open end credit plans

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge.

(5) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed \$5 and is applicable to an extension of consumer

credit not exceeding \$75, or

(B) which does not exceed \$7.50 and is applicable to an extension of consumer credit exceeding \$75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(6) The number, amount, and the due dates or periods of payments scheduled to repay the indebtedness.

(7) The default, delinquency, or similar charges payable in the event of late payments.

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this chapter, the disclosures required by subsection (a) shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor.

(c) If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this chapter to be disclosed to that person is liable to that person in an amount equal to the sum of

(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than \$100 nor greater than \$1,000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

(b) A creditor has no liability under this section

if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

(c) A creditor may not be held liable in any action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in real property may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter, and that it maintained procedures reasonably adapted to apprise it of the existence of any such violations.

(e) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

§ 131. Written acknowledgment as proof of receipt

Except as provided in section 125(c) and except in the case of actions brought under section 130(d), in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this title shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this chapter. This section does not affect the rights of the obligor in any action against the original creditor.

[U.S.C., title 15, sec. 1631-1641.]

CHAPTER 3—CREDIT ADVERTISING

Sec.

- 141. Catalogs and multiple-page advertisements.
- 142. Advertising of downpayments and installments.
- 143. Advertising of open end credit plans.
- 144. Advertising of credit other than open end plans.
- 145. Nonliability of media.

§ 141. Catalogs and multiple-page advertisements

For the purposes of this chapter, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this chapter is clearly set forth.

§ 142. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

- (1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.
- (2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

§ 143. Advertising of open end credit plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan or the appropriate rate determined under section 127(a)(5) unless it also clearly and conspicuously sets forth all of the following items:

- (1) The time period, if any, within which any credit extended may be repaid without incurring a finance charge.
- (2) The method of determining the balance upon which a finance charge will be imposed.
- (3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.
- (4) Where periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(5) Such other or additional information for the advertising of open end credit plans as the Board may by regulation require to provide for adequate comparison of credit costs as between different types of open end credit plans.

§ 144. Advertising of credit other than open end plans

(a) Except as provided in subsection (b), this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this title, other than an open end credit plan.

(b) The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

- (1) The cash price or the amount of the loan as applicable.
- (2) The downpayment, if any.
- (3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.
- (4) The rate of the finance charge expressed as an annual percentage rate.

§ 145. Nonliability of media

There is no liability under this chapter on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

[U.S.C., title 15, sec. 1661-1665.]

* * *

TITLE V—GENERAL PROVISIONS

Sec.

- 501. Severability.
- 502. Captions and catchlines for reference only.
- 503. Grammatical usages.
- 504. Effective dates.

§ 501. Severability

If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

§ 502. Captions and catchlines for reference only

Captions and catchlines are intended solely as

aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act may be drawn from them.

§ 503. Grammatical usages

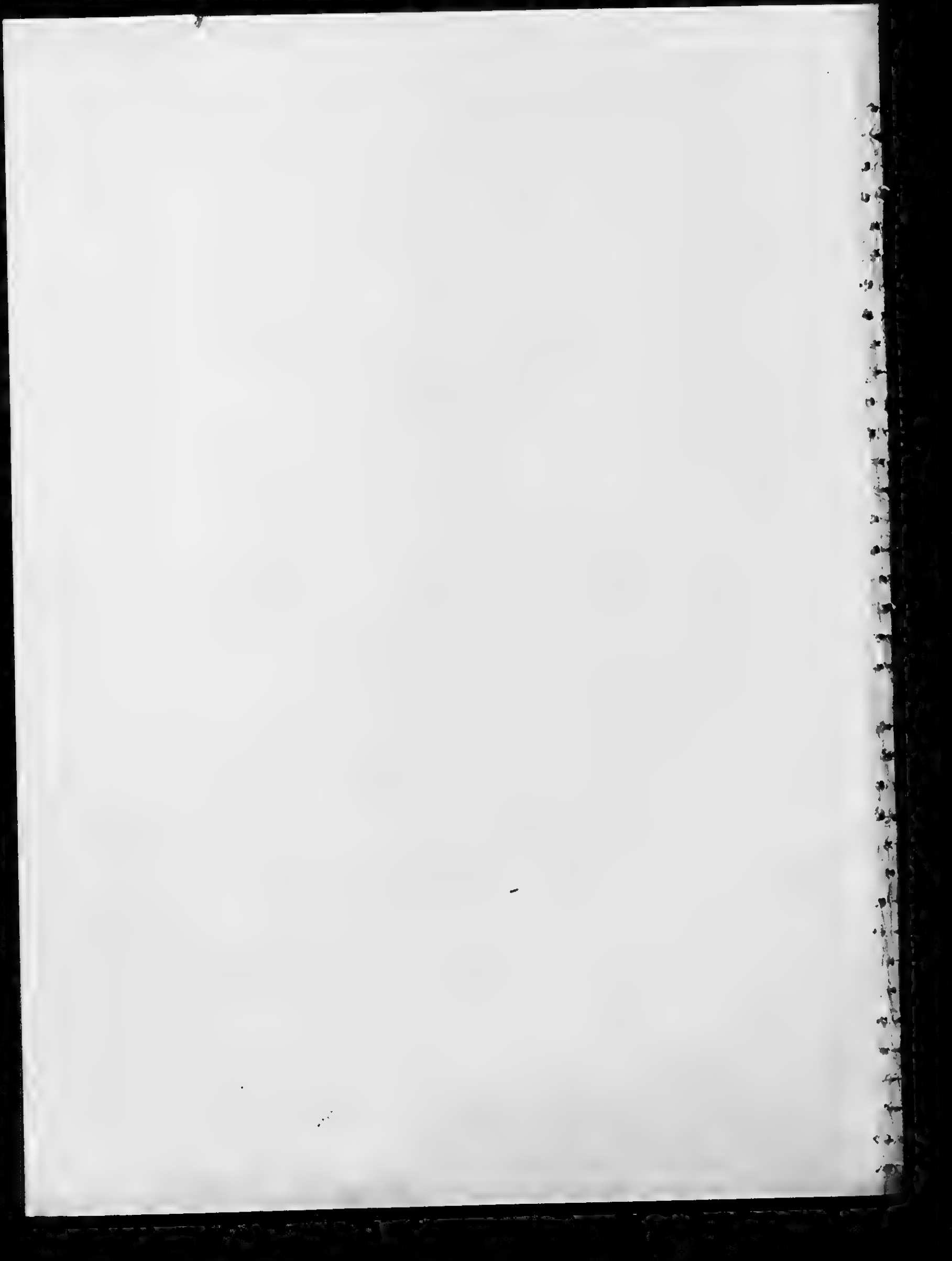
In this Act:

- (1) The word "may" is used to indicate that an action either is authorized or is permitted.
- (2) The word "shall" is used to indicate that an action is both authorized and required.
- (3) The phrase "may not" is used to indicate that an action is both unauthorized and forbidden.
- (4) Rules of law are stated in the indicative mood.

§ 504. Effective dates

- (a) Except as otherwise specified, the provisions of this Act take effect upon enactment.
- (b) Chapters 2 and 3 of title I take effect on July 1, 1969.
- (c) Title III takes effect on July 1, 1970.

[U.S.C., title 15, sec. 1601 note.]



SECTION 226.802—DISCLOSURES ON MAIL OR TELEPHONE ORDERS

Under § 226.8(g), disclosures may be made at any time not later than the date the first payment is due under certain conditions. The question arises as to when disclosures shall be made on mail or telephone orders where the information outlined in § 226.8(g)(1) and (2) is not available to the customer or prospective customer.

Under the circumstances set forth in the above question, the creditor shall make the disclosures required under Regulation Z as follows:

1. With respect to credit sales, not later than at the time of delivery of the property or first performance of service ordered.
2. With respect to loans, not later than at the time proceeds of the loan are disbursed.
3. Except that if the transaction is subject to the provisions of § 226.9, the disclosures shall be made before the transaction is consummated.

5/5/69

SECTION 226.803—DISCLOSURES WHEN DISCOUNTS APPLY FOR PROMPT PAYMENT

Under § 226.8(o), disclosures shall be made on the billing statement whereas under § 226.8(a) disclosures shall be made before the transaction is consummated. The question arises as to which provision prevails.

The provisions of § 226.8(o) prevail under the conditions set forth in that paragraph unless the transaction is also subject to the provisions of § 226.9 in which event the disclosures shall be made before the transaction is consummated.

5/5/69

SECTION 226.804—SERIES OF SALES—CONTENT OF AGREEMENT

Under § 226.8(h), if a credit sale is one of a series of transactions made under an agreement providing for the addition of a current sale to an existing outstanding balance and the customer has approved in writing the annual percentage rate or rates and certain other requirements are met, disclosures may be made at any time not later than the date the first payment for that sale is due.

The question arises as to how the annual percentage rate or rates should be shown in an agreement where, for example, an 18% annual percentage rate applies to the first \$500 of balance, a 12% annual percentage rate applies to all balances over \$500, and the mix of the two rates on trans-

actions over \$500 will produce a gradually decreasing annual percentage rate as the amount of balance over \$500 increases.

In addition to meeting the other requirements of § 226.8(h), if two or more annual percentage rates apply to ranges of balances, the agreement need only state each annual percentage rate and the range of balances to which it applies. However, the disclosures which must be made not later than the date the first payment is due must include the actual annual percentage rate applicable to that sale.

5/5/69

SECTION 226.805—SERIES OF SALES AS DISTINGUISHED FROM REFINANCING, CONSOLIDATING, OR INCREASING

The question arises as to the distinction between the provisions of § 226.8(h), series of sales, and the provisions of § 226.8(j), refinancing, consolidating, or increasing.

Section 226.8(h) is applicable *only* when a credit sale is made pursuant to an agreement which provides for the addition of a current (or new) sale to an existing outstanding balance. In such cases, and provided that all of the requirements of § 226.8(h)(1) and (2) are met, the disclosures may be made at any time not later than the date the first payment for that sale is due.

If there is no agreement, or if the agreement does *not* meet all of the requirements of § 226.8(h), the disclosures required in connection with any subsequent sale, which is added to a previously outstanding balance shall be made under the provisions of § 226.8(j). For example, the fact that an agreement provides a method of computing an unearned portion of the finance charge in the event of prepayment, but does not otherwise meet the requirements of § 226.8(h), will not qualify transactions made pursuant to that agreement for disclosure under the terms of § 226.8(h).

5/26/69

SECTION 226.806—DEPOSIT BALANCES APPLIED TOWARD SATISFACTION OF CUSTOMER'S OBLIGATION

Section 226.8(e)(2) provides that required deposit balances must be deducted under § 226.8(c)(6) and excluded under § 226.8(d)(1) in determining the amount financed. Subdivision (ii) of § 226.8(e)(2) provides an exception in the case of Morris Plan type transactions in which pay-

ments in the transaction are made and accumulated in a deposit account which is then wholly applied to satisfy the obligation.

Unless the deposit balance account is created for the sole purpose of accumulating payments and then being applied toward satisfaction of the customer's obligation in the transaction, such deposit balance does not fall within the exception provided in subdivision (ii).

In any case in which a deposit balance qualifies for this exception, each deposit made into the account shall be considered the same as a payment on the obligation for the purpose of computations and disclosures.

5 26 69

SECTION 226.807—ASSUMPTION OF AN OBLIGATION—DISCLOSURES

The question arises as to which disclosures are required to be made under § 226.8(k).

For the purposes of § 226.8(k), an "assumption" occurs only when, by written agreement entered into between a subsequent customer and the creditor, that subsequent customer is or will be accepted by that creditor as an obligor on an existing evidence of debt. In such circumstances, disclosures shall be made as follows:

(1) If the finance charge originally imposed on the existing evidence of debt was an add-on or discount type finance charge, the creditor need only disclose:

- (i) The unpaid balance of the obligation assumed;
- (ii) The total amount of the charges imposed by the creditor, individually itemized, in connection with the assumption;
- (iii) The number, amount, and due dates of remaining payments to be made after assumption, the total of such payments, and any other applicable information required under § 226.8(b)(3);
- (iv) Identification of the type of security interest, if any, retained or to be acquired in any property of the assuming customer and a brief identification of that property;

(v) The information required to be disclosed under § 226.8(b)(4), (6) and (7);

(vi) If applicable in connection with the assumption, the disclosures required under § 226.4(a)(5) and (6); and

(vii) If that obligation was entered into on or after July 1, 1969, the annual percentage rate

originally disclosed on the existing obligation.

6/10/69

SECTION 226.808—DISCLOSURE OF AMOUNT OF SCHEDULED PAYMENTS

Section 226.8(b)(3) requires the creditor to disclose the "amount . . . of payments scheduled to repay the indebtedness." In certain transactions each payment consists of an equal amount to apply on principal and a finance charge which is determined by application of a rate to the decreasing unpaid balance. In such cases no two payments are equal in amount. The question arises as to whether it is necessary to list the respective dollar amount of each such payment to comply with this requirement of § 226.8(b)(3), or whether an optional disclosure is permitted.

In any transaction in which the amount of each regularly scheduled payment (other than a first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance, at the creditor's option the requirement of § 226.8(b)(3) with respect to the amount of each payment may be met by disclosing the following information:

(1) The amount of each payment to be applied on principal, and an identification of that amount as payment on principal;

(2) The respective amount of finance charge included in the first and last scheduled payments so described;

If this option is utilized, the exceptions provided under paragraphs (b)(3), and (c)(8) and (d)(3) of § 226.8 shall not apply.

6/10/69

SECTION 226.809—DISCLOSURES FOR CERTAIN STUDENT LOANS

Footnotes 10 and 11 to Regulation Z provide an exception from specified disclosure requirements for interim student loans under certain Federally insured student loan programs. These exceptions are applicable to other student loans of the same type, including those made to students under Federally supported loan programs or programs of loan guarantee, administered by or under agreement with the U.S. Department of Health, Education, and Welfare. In all of such cases, however, all disclosures must be made prior to the time the final note is executed or repayment schedule is agreed upon.

6/10/69

SECTION 226.810—DISCLOSURES—VARIABLE INTEREST RATES

In some cases a note, contract, or other instrument evidencing an obligation provides for prospective changes in the annual percentage rate or otherwise provides for prospective variation in the rate. The question arises as to what disclosures must be made under these circumstances when it is not known at the time of consummation of the transaction whether such change will occur or the date or amount of change.

In such cases, the creditor shall make all disclosures on the basis of the rate in effect at the time of consummation of the transaction and shall also disclose the variable feature.

If disclosure is made prior to the consummation of the transaction that the annual percentage rate is prospectively subject to change, the conditions under which such rate may be changed, and, if applicable, the maximum and minimum limits of such rate stipulated in the note, contract, or other instrument evidencing the obligation, such subsequent change in the annual percentage rate in accordance with the foregoing disclosures is a subsequent occurrence under § 226.6(g) and is not a new transaction.

6/20/69

SECTION 226.9**SECTION 226.901—WAIVER OF SECURITY INTERESTS—EFFECT ON THE RIGHT OF RESCISSION**

Section 226.9(a) provides for a right of rescission "in the case of any [consumer] credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer." Under § 226.2(z) security interests include mechanic's and materialmen's liens. If a creditor effectively waives his right to retain, or to acquire such a lien, he has not retained or acquired such security interest. The question arises, however, of whether waiver of a creditor's lien rights is effective to remove a transaction from the scope of rescission when lien rights which are not waived arise in favor of subcontractors, workmen, or others who are not creditors in the transaction.

The fact that the creditor waives his lien rights does not, in itself, determine whether or not the transaction is rescindable. If all security interests

are effectively waived, the transaction is not rescindable. On the other hand, if as a result of the transaction, a security interest is or will be retained or acquired by a subcontractor, workman, or other person, the transaction is rescindable. In the latter case the creditor would be responsible for delivering the rescission notice as well as other applicable disclosures, delaying performance as provided under § 226.9(c), and identifying himself as the creditor on the rescission notice. The subcontractors, workmen, and others would not be responsible for delivering rescission notices to the customer.

5/26/69

SECTION 226.902—"CUSTOMERS" AND JOINT OWNERS OF PROPERTY UNDER THE RIGHT OF RESCISSION

Section 226.9(f) provides that, for the purpose of the right of rescission, "customer" shall include two or more customers where joint ownership is involved. The question arises of whether this means that all joint owners of record, regardless of whether or not they are parties to the transaction, are customers for this purpose, and whether each of such owners of record (1) must receive disclosures and a notice of the right of rescission, (2) may exercise the right of rescission, and (3) must join in signing a waiver if one is appropriately taken by the creditor.

Under § 226.9(f) where there are joint owners, the right to receive disclosures and notice of the right of rescission, the right to rescind, and the need to sign a waiver of such right, apply only to those joint owners who are parties to the transaction.

5/26/69

SECTION 226.903—REFINANCING AND INCREASING—DISCLOSURES AND EFFECTS ON THE RIGHT OF RESCISSION

In some cases the creditor of an obligation will refinance that obligation at the request of a customer by permitting the customer to execute a new note, contract, or other document evidencing the transaction under the terms of which one or more of the original credit terms, including the maturity date of the obligation, are changed. Although such refinancing constitutes a new transaction, and all disclosures required under § 226.8 must be made, the question arises as to whether that transaction is subject to the right of rescission under § 226.9 where the obligation is already se-

cured by a lien on real property which is used or expected to be used as the principal residence of that customer.

If the amount of such new transaction does not exceed the amount of the unpaid balance plus any accrued and unpaid finance charge on the existing obligation, § 226.9 does not apply to the transaction.

If, however, such new transaction is for an increased amount, that is, for an amount in excess of the amount of the unpaid balance plus any accrued and unpaid finance charge on the existing obligation, § 226.9 applies to the transaction. However, such right of rescission applies only to such excess and does not affect the existing obligation (or related security interest) for the unpaid balance plus accrued unpaid finance charge.

If a transaction is refinanced by a creditor other than the creditor of the existing obligation, the entire transaction is subject to § 226.9.

6/20/69

SECTION 226.10

SECTION 226.1001—ADVERTISING OF CREDIT TERMS IN OTHER THAN OPEN END CREDIT

The statement of certain credit terms in advertisements such as "no downpayment", the amount of any installment payments, dollar amount of finance charge, number of payments, etc., as provided in § 226.10(d)(2), requires that certain other terms also be stated in the same advertisement. The question arises as to how a creditor may advertise credit terms in a meaningful way when all of his credit sales or loans are not made on the same basis.

The advertising of credit terms may be made by giving one or more examples of typical extensions of credit and stating all of the terms applicable to each example. In any such case, the advertiser shall set forth one or more examples which are, in fact, typical of the type of credit and terms usually and customarily made available by the creditor to present and prospective customers and each shall be clearly and conspicuously identified as examples of typical transactions.

4/22/69

SECTION 226.1002—CATALOGS—TABLES OR SCHEDULES OF CREDIT TERMS

Under § 226.10(b) in order that a catalog may qualify as a single advertisement, among other things, it must include a table or schedule of credit terms. It has been the practice of catalog houses to include such tables in catalogs; however, such tables generally state amounts of purchases, amounts of finance charges, and number and amount of payments for brackets up to a certain level and then contain an instruction to include a specified dollar amount in computing the finance charge by application of a percentage rate on any purchase in excess of that level. Tables to show the actual terms including annual percentage rates for all purchases into thousands of dollars would be unwieldy, present a formidable appearance, and may be more confusing than helpful to the user. The question arises as to whether a creditor who publishes a catalog is required to include tables in detailed amounts from the minimum up to, for example, \$5,000, his highest priced cataloged merchandise.

Tables or schedules of terms in catalogs must include all amounts up to a level of the more commonly sold higher priced property or services which are offered for sale, but in no event greater than \$1,000 unless the creditor elects to do so. If the creditor offers property or service for sale at prices higher than the uppermost level covered by his table, he shall state the method by which the finance charge is computed on larger amounts, how the amount of payments and the number and periods of payments are determined and state, for each representative amount in increments of not more than \$500 up to the highest priced property or service offered, the annual percentage rate. Any catalog which contains such a table or schedule of credit terms will comply with requirements of § 226.10(b) provided all other requirements are met and such catalog shall be considered adequate for the purpose of § 226.8(g)(1).

4/22/69

[Interpretations available from Publications Services, Division of Administrative Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.]





Some questions and answers about the advertising of credit

Q: Does Regulation Z affect credit advertising?

A: Yes it does. It affects all advertising to aid or promote any extension of consumer credit regardless of who the advertiser may be. An association, for example, which advertises that its members extend consumer credit is subject to the advertising provisions of Regulation Z.

Q: What kinds of advertising are affected?

A: All types of advertising: television, radio, newspapers, magazines, leaflets, flyers, catalogs, public address announcements, direct mail literature, window displays, billboards, etc. (Reg. Z/226.2 (b))

Q: How does Regulation Z affect your advertising as a creditor?

A: Generally, you may not advertise that the down payment, installment plan or amount of credit can be arranged unless you usually arrange terms of this type. (Reg. Z/226.10 (a))

Q: How else is credit advertising affected?

A: If it is open end credit see Reg. Z/226.10 (c). For credit *other* than open end see Reg. Z/226.10 (d). If you advertise in catalogs, see Reg. Z/226.10 (b). But generally you are not permitted to advertise any specific credit term unless all other terms involved are stated clearly and can be easily seen.

Typical formats of disclosures under Regulation Z are shown on the following pages for demonstration only. They are not intended for the requirements of your business. For full information, please refer to the provisions of the Regulation.

EXHIBIT A

Example of a retailer's statement, prepared by a manual billing operation, for an account on which the finance charge is determined by a single periodic rate or a minimum charge of 50 cents applicable to balances under a specific amount. It also assumes that the finance charge is computed on the previous balance before deducting payments and/or credits. Separate slips shall accompany each statement, identifying all charges and credits and showing the dates and amounts thereof.

Any Store U.S.A.						
MAIN STREET—ANY CITY, U.S.A.						
(Customer's name here)						
						AMT. PAID \$
TO INSURE PROPER CREDIT RETURN THIS PORTION WITH YOUR PAYMENT						
PREVIOUS BALANCE	FINANCE CHARGE 50 CENT MINIMUM	PAYMENTS	CREDITS	PURCHASES	NEW BALANCE	MINIMUM PAYMENT
<p>FINANCE CHARGE IS COMPUTED BY A "PERIODIC RATE" OF % PER MONTH (OR A MINIMUM CHARGE OF 50 CENTS FOR BALANCES UNDER \$) WHICH IS AN ANNUAL PERCENTAGE RATE OF % APPLIED TO THE PREVIOUS BALANCE WITHOUT DEDUCTING CURRENT PAYMENTS AND/OR CREDITS APPEARING ON THIS STATEMENT.</p> <p>NOTICE</p> <p>PLEASE SEE ACCOMPANYING STATEMENT(S) FOR IMPORTANT INFORMATION.</p>						
<p>PAYMENTS, CREDITS OR CHARGES, RECEIVED AFTER THE DATE SHOWN ABOVE THE ARROW, WHICH IS THE CLOSING DATE OF THIS BILLING CYCLE, WILL APPEAR ON YOUR NEXT STATEMENT. TO AVOID ADDITIONAL FINANCE CHARGES PAY THE "NEW BALANCE" BEFORE THIS DATE NEXT MONTH.</p>						
ANY STORE, U.S.A. MAIN STREET, ANY CITY, U.S.A.						

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (c) of §226.7 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

**ILLUSTRATION OF FEDERAL DISCLOSURES ON A PERIODIC STATEMENT
FOR A RETAIL OPEN END CREDIT ACCOUNT**
(Section 226.7)

Applicable Disclosures Shown on Exhibit A (opposite page)	Regulation Z Reference (226.7)
1. "Previous Balance"	(b) (1) & (c) (1)
2. Purchases	(b) (2) & (c) (1)
3. "Payments"	(b) (3) & (c) (1)
4. "Credits"	(b) (3) & (c) (1)
5. "Finance Charge" (showing minimum charge)	(b) (4) & (c) (1)
6. "Periodic Rate" (showing balance to which applicable)	(b) (5) & (c) (2)
7. "Annual Percentage Rate"	(b) (6) & (c) (1)
8. Balance on which Finance Charge Was Computed (with explanation of how balance was determined)	(b) (8) & (c) (2)
9. Closing Date of the Billing Cycle	(b) (9) & (c) (1)
10. Balance at Closing Date, "New Balance"	(b) (9) & (c) (1)
11. Date or Period for Payment to Avoid Additional Finance Charges	(b) (9) & (c) (1)

Other Disclosures Applicable to Example but not Illustrated on Exhibit A

(These disclosures would be made on separate slips which would
accompany statement but which are not illustrated here.)

1. Date of Each Purchase (b) (2) & (c) (1)
2. Brief Identification of Each Purchase (b) (2) & Footnote 7
3. Brief Identification of Credits Other Than Payments (b) (3) & Footnote 8

Other Disclosures Not Applicable to Example Illustrated on Exhibit A

Regulation Z prescribes other disclosures to be made on open end credit account periodic statements which are not applicable to the illustrated example, such as, where there is more than one periodic rate (b)(5), more than one annual percentage rate (b)(6), charges for insurance 226.4 (a)(5) and (6), etc.

EXHIBIT B

Example of a retailer's descriptive statement, prepared by an automated billing operation, for an account on which the finance charge is determined by a single periodic rate or a minimum charge of 50 cents applicable to balances under a specified amount. It also assumes that the finance charge is computed on the previous balance before deducting payments and/or credits.

(FACE OF FORM)

Any Store U.S.A.						
MAIN STREET—ANY CITY, U.S.A.						
(Customer's name here)						
YOUR ACCOUNT NUMBER IS _____						
----- TO INSURE PROPER CREDIT RETURN THIS PORTION WITH PAYMENT -----						
BILLING DATES		To Your PREVIOUS BALANCE	We Added Your FINANCE CHARGE 50c MINIMUM	We Deducted Your		We Added Your
NEXT MO.	THIS MO.			PAYMENTS	CREDITS	
TRANSACTION NO.	DATE	STORE	DEPT. NO.	DEPARTMENT NAME	CHARGES	PAYMENTS & CREDITS
To Avoid Additional Finance Charges, Pay The "New Balance" Before Your Billing Date Next Month.			This Is Your NEW BALANCE	This Is Your MINIMUM PAYMENT	ANNUAL PERCENTAGE RATE %	
NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION						

(REVERSE SIDE OF FORM)

PAYMENTS, CREDITS OR CHARGES RECEIVED AFTER YOUR BILLING DATE "THIS MONTH" WILL APPEAR ON YOUR NEXT STATEMENT. YOUR FINANCE CHARGE IS COMPUTED BY A SINGLE PERIODIC RATE OF % (OR A MINIMUM CHARGE OF 50 CENTS FOR BALANCES UNDER \$) WHICH IS AN ANNUAL PERCENTAGE RATE OF % APPLIED TO YOUR "PREVIOUS BALANCE" WITHOUT DEDUCTING CURRENT PAYMENTS AND/OR CREDITS APPEARING ON THE FACE OF THIS STATEMENT.

DEPT. NO.	DEPT. NAME	DEPT. NO.	DEPT. NAME	DEPT. NO.	DEPT. NAME
1	MEN'S ACCESSORIES (Shirts, Ties, Socks, etc.)				
2	MEN'S CLOTHING (Suits, Sportcoats, Outerwear, etc.)				
(In this form of billing, this side of the statement contains a listing of all departments and a brief description of the merchandise sold in each.)					
ANY STORE, U.S.A., MAIN ST., ANY CITY, U.S.A.					

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (c) of §226.7 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

ANOTHER ILLUSTRATION OF FEDERAL DISCLOSURES ON A PERIODIC STATEMENT FOR A RETAIL OPEN END CREDIT ACCOUNT

(Section 226.7)

Applicable Disclosures Shown on Exhibit B (opposite page)	Regulation Z Reference (226.7)
1. "Previous Balance"	(b) (1) & (c) (1)
2. Purchases	(b) (2) & (c) (1)
3. "Payments"	(b) (3) & (c) (1)
4. "Credits"	(b) (3) & (c) (1)
5. "Finance Charge" (showing minimum charge)	(b) (4) & (c) (1)
6. "Annual Percentage Rate"	(b) (6) & (c) (1)
7. Balance on Which Finance Charge was Computed	(b) (8) & (c) (2)
8. Closing Date of the Billing Cycle	(b) (9) & (c) (1)
9. Balance at Closing Date, "New Balance"	(b) (9) & (c) (1)
10. Date or Period for Payment to Avoid Additional Finance Charge	(b) (9) & (c) (1)
11. Date of Each Purchase	(b) (2) & (c) (1)
12. Brief Identification of Each Purchase by Symbol Relating to an Identification List Printed on the Reverse Side	(b) (2) & Footnote 7
13. Brief Identification of Credits Other Than Payments by Symbol Relating to an Identification List Printed on the Reverse Side	(b) (3) & Footnote 8

Other Disclosures Applicable to Example Which Appear on Reverse Side of Exhibit B

1. "Periodic Rate" (showing balance to which applicable) (b) (5) & (c) (2)
2. "Annual Percentage Rate" (b) (6) & (c) (2)
3. Reference to the Finance Charge (showing minimum charge). (b) (4) & (c) (2)
4. Reference to the Balance on Which Finance Charge
was Computed (with explanation of how balance
was determined) (b) (8) & (c) (2)
5. Identification List to Identify Transactions (b) (2) and (3)

Other Disclosures Not Applicable to Example Illustrated on Exhibit B

Regulation Z prescribes other disclosures to be made on open end credit account periodic statements which are not applicable to the illustrated example, such as, where there is more than one periodic rate (b) (5), more than one annual percentage rate (b) (6), charges for insurance 226.4 (a) (5) and (6), etc.

[illegible]

22

ILLUSTRATIONS OF FEDERAL DISCLOSURES ON A RETAIL INSTALLMENT CONTRACT

(Section 226.8)

Applicable Disclosures Shown on Exhibit C (opposite page)	Regulation Z Reference (226.8)
1. "Cash Price"	(c)(1)
2. "Cash Downpayment"	(c)(2)
3. "Trade-In"	(c)(2)
4. "Total Downpayment"	(c)(2)
5. "Unpaid Balance of Cash Price"	(c)(3)
6. Other Charges Individually Itemized (not finance charges)	(c)(4)
7. "Amount Financed"	(c)(7)
8. "Finance Charge"	(c)(8)(i)
9. "Deferred Payment Price"	(c)(8)(ii)
10. Date Finance Charge Begins to Accrue	(b)(1)
11. "Annual Percentage Rate"	(b)(2)
12. Number, Amount, and Due Dates of Payments	(b)(3)
13. "Total of Payments"	(b)(3)
14. Identification of Security Interest	(b)(5)
15. Identification of Property to Which Security Interest Relates	(b)(5)
16. Method of Computing Any Unearned Portion of the Finance Charge	(b)(7)
17. Identification of Creditor	(a)
18. Charges for Credit Life, Accident, Health or Loss of Income Insurance	226.4(a)(5)

Other Disclosures Not Applicable to Example Illustrated on Exhibit C

Regulation Z prescribes other disclosures to be made in connection with credit sales depending on the terms of the transaction and type of security interest taken by the creditor. For example:

§226.8

"Prepaid Finance Charge"	(c)(6)
"Required Deposit Balance"	(c)(6)
"Balloon Payment"	(b)(3)
Default, Delinquency or Similar Charges	(b)(4)
After Acquired Property	(b)(5)
Security for Future Indebtedness	(b)(5)
Penalty Charge	(b)(6)
Unearned Finance Charge	(b)(7)
Property Insurance	226.4(a)(6)
Real Property Security	226.9

EXHIBIT D

Example of disclosures on a promissory note for non-sale credit for which a finance charge is added to the amount financed and the obligation is repayable in installments.

PROMISSORY NOTE

(City) _____ (State) _____ 19____

For value received, undersigned maker(s), jointly and severally, promise to pay to the order of _____ at the above place _____ dollars (\$_____) in _____ consecutive monthly payments of \$_____, each beginning one month from the date hereof and thereafter on the same date of each subsequent month until paid in full. Any unpaid balance may be paid, at any time, without penalty and any unearned finance charge will be refunded based on the "Rule of 78's". In the event that maker(s) default(s) on any payment, a charge of _____ may be assessed.

1. Proceeds	\$ _____
2. _____ (Other charges, itemized)	_____
3. Amount financed (1+2)	\$ _____
4. FINANCE CHARGE	_____
5. Total of payments	\$ _____
ANNUAL PERCENTAGE RATE	_____ %

Signed _____

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (d) of §226.8 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

**ILLUSTRATION OF FEDERAL DISCLOSURES ON A PROMISSORY
NOTE FOR A LOAN
(Section 226.8)**

Applicable Disclosures Shown on Exhibit D (opposite page)	Regulation Z Reference (226.8)
1. "Amount Financed"	(d) (1)
2. Other Charges Individually Itemized (not finance charges)	(d) (1)
3. "Finance Charge"	(d) (3)
4. "Annual Percentage Rate"	(b) (2)
5. Number, Amount, Due Dates of Payments	(b) (3)
6. "Total of Payments"	(b) (3)
7. Charges for Default or Late Payment	(b) (4)
8. Method of Computing Any Unearned Finance Charge	(b) (7)
9. Identification of Creditor	(a)

Other Disclosures Not Applicable to Example Shown in Exhibit D

See comment under similar heading on Page 23.

EXHIBIT E

DISCLOSURE STATEMENT OF LOAN									
BORROWERS (NAMES AND ADDRESSES): _____ _____ _____				LENDER: _____		LOAN NO. _____		Date _____	
(STREET ADDRESS)				(CITY)		(STATE)		(ZIP)	
TOTAL OF PAYMENTS	FINANCE CHARGE	AMOUNT FINANCED	ANNUAL PERCENTAGE RATE:	CREDIT LIFE INSURANCE CHARGE	DISABILITY INSURANCE CHARGE	PROPERTY INSURANCE CHARGE			
\$	\$	\$	%	\$	\$	\$			
PAYABLE IN: CONSECUTIVE MONTHLY INSTALLMENTS	DUE DATE OF PAYMENTS			AMOUNT OF PAYMENTS			RECORDING FEE		
	FIRST:	OTHERS: SAME DAY OF EACH MONTH	FINAL:	FIRST:	OTHERS:	FINAL:			
				\$	\$	\$	\$		

INSURANCE

PROPERTY INSURANCE, if written in connection with this loan, may be obtained by borrower through any person of his choice. If borrower desires property insurance to be obtained through the creditor, the cost will be \$_____ for the term of the credit.

CREDIT LIFE AND DISABILITY INSURANCE is not required to obtain this loan. No charge is made for credit insurance and no credit insurance is provided unless the borrower signs the appropriate statement below:

(a) The cost for Credit Life Insurance alone will be \$_____ for the term of the credit.

(b) The cost for Credit Life and Disability Insurance will be \$_____ for the term of the credit.

☐ I desire Credit Life and Disability Insurance.
 ☐ I desire Credit Life Insurance only.
 ☐ I DO NOT want Credit Life or Disability Insurance.

(Date) (Signature) (Date) (Signature) (Date) (Signature)

REBATE FOR PREPAYMENT IN FULL. If the loan contract is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall receive a rebate of precomputed interest computed under the Rule of 78's.

DEFAULT CHARGE. [The creditor should set forth the amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.]

SECURITY

A. ☐ This Loan is Secured By a Security Agreement of Even Date covering.....

The Security Agreement will secure future or other indebtedness and will cover after-acquired property.

B. ☐ This Loan is Unsecured.

DESCRIPTION

☐ Motor Vehicle(s): Make-..... Serial No:

☐ Household Goods & Appliances of the following description:.....

.....

.....

☐ Other: (Describe)

I ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Borrower:

Witness:

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (d) of § 226.8 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

ILLUSTRATION OF FEDERAL DISCLOSURES ON A SEPARATE STATEMENT FOR A LOAN REPAYABLE IN INSTALLMENTS

(Section 226.8)

Regulation Z
Reference (226.8)

Applicable Disclosures Shown on Exhibit E (opposite page)

1. Identification of Transaction (a)
2. "Amount Financed" including itemized charges other than finance
charges. (Note §226.4(b)) (d) (1)
3. "Finance Charge" (d) (3)
4. "Annual Percentage Rate" (b) (2)
5. Number, Amount, and Due Date of Payments (b) (3)
6. "Total of Payments" (b) (3)
7. Default, Delinquency, or Similar Charge (b) (4)
8. Identification of Security Interest (b) (5)
9. Identification of Property to Which Security Interest Relates (b) (5)
10. Method of Computing Any Unearned Portion of the Finance Charge (b) (7)
11. After-acquired Property Subject to Security Interest (b) (5)
12. Security for Future Indebtedness (b) (5)
13. Identification of Creditor (a)
14. Credit Life, Accident, and Health Insurance §226.4 (a) (5)
15. Property and Liability Insurance §226.4 (a) (6)

Other Disclosures Not Applicable to Example Shown in Exhibit E

Regulation Z prescribes other disclosures to be made in connection with loan credit which are not applicable to the illustrated example, such as, prepaid finance charge (d) (2) required deposit balance (d) (2) and balloon payment (b)(3), etc.

EXHIBIT F**NOTICE OF RIGHT OF RESCISSION**

The following form is the form of notice of the right to rescind a transaction required to be given to customers under certain circumstances set forth in Section 226.9 of Regulation Z. This exhibit is set in capitals and lower case letters of 12 point bold faced type, the minimum size permissible under Regulation Z.

(Identification of Transaction)

Notice To Customer Required By Federal Law:

You have entered into a transaction on _____ which may
(Date)
result in a lien, mortgage, or other security interest on your home. You have a
legal right under federal law to cancel this transaction, if you desire to do so,
without any penalty or obligation within three business days from the above
date or any later date on which all material disclosures required under the
Truth in Lending Act have been given to you. If you so cancel the transaction,
any lien, mortgage, or other security interest on your home arising from this
transaction is automatically void. You are also entitled to receive a refund of
any downpayment or other consideration if you cancel. If you decide to cancel
this transaction, you may do so by notifying

(Name of Creditor)

at _____

(Address of Creditor's Place of Business)

by mail or telegram sent not later than midnight of _____. You
(Date)
may also use any other form of written notice identifying the transaction if it is
delivered to the above address not later than that time. This notice may be
used for that purpose by dating and signing below.

I hereby cancel this transaction.

(Date)

(Customer's signature)

EXHIBIT F

The following paragraph may appear on the face or the reverse side of the notice shown on the opposite page. If it appears on the reverse side of the notice, the face of the notice shall state, "See reverse side for important information about your right of rescission."

EFFECT OF RESCISSION. When a customer exercises his right to rescind under paragraph (a) of this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within 10 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

EXHIBIT G

SAMPLE PAGE FROM TABLE FOR COMPUTING ANNUAL PERCENTAGE RATE FOR LEVEL MONTHLY PAYMENT PLANS

EXAMPLE

Finance charge = \$35.00; Total amount financed = \$200; Number of monthly payments = 24.

SOLUTION

Step 1—Divide the finance charge by the total amount financed and multiply by \$100. This gives the finance charge per \$100 of amount financed. That is, $\$35.00 \div \$200 = .1750 \times \$100 = \17.50 .

Step 2—Follow down the left hand column of the table to the line for 24 months. Follow across this line until you find the nearest number to \$17.50. In this example \$17.51 is closest to \$17.50. Reading up the column of figures shows an annual percentage rate of 16%.

NUMBER OF PAYMENTS	ANNUAL PERCENTAGE RATE															
	14.00%	14.25%	14.50%	14.75%	15.00%	15.25%	15.50%	15.75%	16.00%	16.25%	16.50%	16.75%	17.00%	17.25%	17.50%	17.75%
	(FINANCE CHARGE PER \$100 OF AMOUNT FINANCED)															
1	1.17	1.19	1.21	1.23	1.25	1.27	1.29	1.31	1.33	1.35	1.37	1.40	1.42	1.44	1.46	1.48
2	1.75	1.78	1.82	1.85	1.88	1.91	1.94	1.97	2.00	2.04	2.07	2.10	2.13	2.16	2.19	2.22
3	2.34	2.38	2.43	2.47	2.51	2.55	2.59	2.64	2.68	2.72	2.76	2.80	2.85	2.89	2.93	2.97
4	2.93	2.99	3.04	3.09	3.14	3.19	3.24	3.29	3.34	3.39	3.44	3.49	3.54	3.59	3.64	3.69
5	3.43	3.49	3.55	3.61	3.67	3.72	3.78	3.84	3.90	3.96	4.01	4.07	4.13	4.19	4.25	4.31
6	4.12	4.20	4.27	4.35	4.42	4.49	4.57	4.64	4.72	4.79	4.87	4.94	5.02	5.09	5.17	5.24
7	4.72	4.81	4.90	4.98	5.06	5.15	5.23	5.32	5.40	5.49	5.58	5.66	5.75	5.83	5.92	6.00
8	5.32	5.42	5.51	5.61	5.71	5.80	5.90	6.00	6.09	6.19	6.29	6.38	6.48	6.58	6.67	6.77
9	5.92	6.03	6.14	6.25	6.35	6.46	6.57	6.68	6.78	6.89	7.00	7.11	7.22	7.32	7.43	7.54
10	6.53	6.65	6.77	6.88	7.00	7.12	7.24	7.36	7.48	7.60	7.72	7.84	7.96	8.08	8.19	8.31
11	7.14	7.27	7.40	7.53	7.66	7.79	7.92	8.05	8.18	8.31	8.44	8.57	8.70	8.83	8.96	9.09
12	7.74	7.89	8.03	8.17	8.31	8.45	8.59	8.74	8.88	9.02	9.16	9.30	9.45	9.59	9.73	9.87
13	8.36	8.51	8.66	8.81	8.97	9.12	9.27	9.43	9.58	9.73	9.89	10.04	10.20	10.35	10.50	10.66
14	8.97	9.13	9.30	9.46	9.63	9.79	9.96	10.12	10.29	10.45	10.62	10.78	10.95	11.11	11.28	11.45
15	9.59	9.76	9.94	10.11	10.29	10.47	10.64	10.82	11.00	11.17	11.35	11.53	11.71	11.88	12.06	12.24
16	10.20	10.39	10.58	10.77	10.95	11.14	11.33	11.52	11.71	11.90	12.09	12.28	12.46	12.65	12.84	13.03
17	10.82	11.02	11.22	11.42	11.62	11.82	12.02	12.22	12.42	12.62	12.83	13.03	13.23	13.43	13.63	13.83
18	11.45	11.66	11.87	12.08	12.29	12.50	12.71	12.93	13.14	13.35	13.57	13.78	13.99	14.21	14.42	14.64
19	12.07	12.30	12.52	12.74	12.97	13.19	13.41	13.64	13.86	14.09	14.31	14.54	14.76	14.99	15.22	15.44
20	12.70	12.93	13.17	13.41	13.64	13.88	14.11	14.35	14.59	14.82	15.06	15.30	15.54	15.77	16.01	16.25
21	13.33	13.58	13.82	14.07	14.32	14.57	14.82	15.06	15.31	15.56	15.81	16.06	16.31	16.56	16.81	17.07
22	13.96	14.22	14.48	14.74	15.00	15.26	15.52	15.78	16.04	16.30	16.57	16.83	17.09	17.36	17.62	17.88
23	14.59	14.87	15.14	15.41	15.68	15.96	16.23	16.50	16.77	17.04	17.32	17.60	17.88	18.15	18.43	18.70
24	15.23	15.51	15.80	16.08	16.37	16.65	16.94	17.22	17.51	17.80	18.09	18.37	18.66	18.95	19.24	19.53
25	15.87	16.17	16.46	16.76	17.06	17.35	17.65	17.95	18.25	18.55	18.85	19.15	19.45	19.75	20.05	20.36
26	16.51	16.82	17.13	17.44	17.75	18.06	18.37	18.68	18.99	19.30	19.62	19.93	20.24	20.56	20.87	21.19
27	17.15	17.47	17.80	18.12	18.44	18.76	19.09	19.41	19.74	20.06	20.39	20.71	21.04	21.37	21.69	22.02
28	17.80	18.13	18.47	18.80	19.14	19.47	19.81	20.15	20.48	20.82	21.16	21.50	21.84	22.19	22.52	22.86
29	18.45	18.79	19.14	19.49	19.83	20.18	20.53	20.88	21.23	21.58	21.94	22.29	22.64	22.99	23.35	23.70
30	19.10	19.45	19.81	20.17	20.54	20.90	21.26	21.62	21.99	22.35	22.72	23.08	23.45	23.81	24.18	24.55
31	19.75	20.12	20.49	20.87	21.24	21.61	21.99	22.37	22.74	23.12	23.50	23.88	24.26	24.64	25.02	25.40
32	20.40	20.79	21.17	21.56	21.95	22.33	22.72	23.11	23.50	23.89	24.28	24.68	25.07	25.46	25.86	26.25
33	21.06	21.46	21.85	22.25	22.65	23.04	23.44	23.84	24.24	24.64	25.04	25.44	25.84	26.24	26.64	27.04
34	21.72	22.13	22.54	22.95	23.37	23.78	24.19	24.61	25.03	25.45	25.86	26.28	26.70	27.12	27.54	27.97
35	22.38	22.80	23.23	23.65	24.08	24.51	24.94	25.36	25.79	26.23	26.66	27.09	27.52	27.96	28.39	28.83
36	23.04	23.48	23.92	24.35	24.80	25.24	25.68	26.12	26.57	27.01	27.46	27.90	28.35	28.80	29.25	29.70
37	23.70	24.16	24.61	25.06	25.51	25.97	26.42	26.88	27.34	27.80	28.26	28.72	29.18	29.64	30.10	30.57
38	24.37	24.84	25.30	25.77	26.24	26.70	27.17	27.64	28.11	28.59	29.06	29.53	30.01	30.49	30.96	31.44
39	25.04	25.52	26.00	26.48	26.96	27.44	27.92	28.41	28.89	29.38	29.87	30.36	30.85	31.34	31.83	32.32
40	25.71	26.20	26.70	27.19	27.69	28.18	28.68	29.18	29.68	30.18	30.68	31.18	31.68	32.19	32.69	33.20
41	26.39	26.89	27.40	27.91	28.41	28.92	29.44	29.95	30.46	30.97	31.49	32.01	32.52	33.04	33.56	34.08
42	27.06	27.58	28.10	28.62	29.15	29.67	30.19	30.72	31.25	31.78	32.31	32.84	33.37	33.90	34.44	34.97
43	27.74	28.27	28.81	29.34	29.88	30.42	30.96	31.50	32.04	32.58	33.13	33.67	34.22	34.76	35.31	35.86
44	28.42	28.97	29.52	30.07	30.62	31.17	31.72	32.28	32.83	33.39	33.95	34.51	35.07	35.63	36.19	36.76
45	29.11	29.67	30.23	30.79	31.36	31.92	32.49	33.06	33.63	34.20	34.77	35.35	35.92	36.50	37.08	37.66
46	29.79	30.36	30.94	31.52	32.10	32.68	33.26	33.84	34.43	35.01	35.60	36.19	36.78	37.37	37.96	38.56
47	30.48	31.07	31.66	32.25	32.84	33.44	34.03	34.63	35.23	35.83	36.43	37.04	37.64	38.25	38.86	39.46
48	31.17	31.77	32.37	32.98	33.59	34.20	34.81	35.42	36.03	36.65	37.27	37.88	38.50	39.13	39.75	40.37
49	31.86	32.48	33.09	33.71	34.34	34.96	35.59	36.21	36.84	37.47	38.10	38.74	39.37	40.01	40.65	41.29
50	32.55	33.18	33.82	34.45	35.09	35.73	36.37	37.01	37.65	38.30	38.94	39.59	40.24	40.89	41.55	42.20
51	33.25	33.89	34.54	35.19	35.84	36.49	37.15	37.81	38.46	39.12	39.79	40.45	41.11	41.78	42.45	43.12
52	33.95	34.61	35.27	35.93	36.60	37.27	37.94	38.61	39.28	39.96	40.63	41.31	41.99	42.67	43.36	44.04
53	34.65	35.32	36.00	36.68	37.36	38.04	38.72	39.41	40.10	40.79	41.48	42.17	42.87	43.57	44.27	44.97
54	35.35	36.04	36.73	37.42	38.12	38.82	39.52	40.22	40.92	41.63	42.33	43.04	43.75	44.47	45.18	45.90
55	36.05	36.76	37.46	38.17	38.88	39.60	40.31	41.03	41.74	42.47	43.19	43.91	44.64	45.37	46.10	46.83
56	36.76	37.48	38.20	38.92	39.65	40.38	41.11	41.84	42.57	43.31	44.05	44.79	45.53	46.27	47.02	47.77
57	37.47	38.20	38.94	39.68	40.42	41.16	41.91	42.65	43.40	44.15	44.91	45.66	46.42	47.18	47.94	48.71
58	38.18	38.93	39.68	40.43	41.19	41.95	42.71	43.47	44.23	45.00	45.77	46.54	47.32	48.09	48.87	49.65
59	38.89	39.66	40.42	41.19	41.96	42.74	43.51	44.29	45.07	45.85	46.64	47.42	48.21	49.01	49.80	50.60
60	39.61	40.39	41.17	41.95	42.74	43.53	44.32	45.11	45.91	46.71	47.51	48.31	49.12	49.92	50.73	51.55

The table shown on the opposite page (Exhibit G) is one page out of the tables compiled by the Federal Reserve Board to assist creditors in figuring out the annual percentage rate of the cost of credit, or the amount of the finance charge for a given rate. These tables are described on page 4 of this pamphlet.

No. 22,702

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LEON A. TASHOF, INDIVIDUALLY TRADING AS
NEW YORK JEWELRY COMPANY, PETITIONER,

v.

FEDERAL TRADE COMMISSION, RESPONDENT.

On Petition to Review an Order
of the Federal Trade Commission

BRIEF FOR RESPONDENT

United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 22 1969

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Washington, D.C. 20580



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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,702

**LEON A. TASHOF, INDIVIDUALLY TRADING AS
NEW YORK JEWELRY COMPANY, PETITIONER,**

v.

FEDERAL TRADE COMMISSION, RESPONDENT.

**On Petition to Review an Order
of the Federal Trade Commission**

BRIEF FOR RESPONDENT

**STATEMENT OF THE ISSUES
PRESENTED FOR REVIEW**

I. Whether the Commission's finding that New York Jewelry Company advertised its eyeglasses for \$7.50 and that this was not a bona fide offer is supported by substantial evidence.

II. Whether the Commission's finding that New York Jewelry Company misrepresented its eyeglass prices as discount is supported by substantial evidence.

III. Whether the Commission's finding that New York Jewelry Company failed to disclose credit terms and total price to be paid and that these failures constituted unfair and deceptive acts and practices is supported by substantial evidence and is otherwise in accordance with law.

IV. Whether the Commission's finding that New York Jewelry Company unfairly and deceptively represented that it offered "easy credit" is supported by substantial evidence.

V. Whether the complaint reasonably placed petitioner on notice that his representations as to "easy credit" were alleged to be false, misleading, deceptive and unfair in the respects ultimately found by the Commission.

VI. Whether the Commission's choice of order to cease and desist is within its allowable discretion.

STATEMENT OF THE CASE

Petitioner's statement of the case is incomplete, particularly in that it contains no statement of facts. Respondent, therefore, is constrained to present this statement of the case.

This case arises upon a petition to review an order to cease and desist issued by the Federal Trade Commission at the conclusion of a proceeding upon a complaint which charged petitioner with engaging in unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.¹

¹ The pertinent provisions of the Act are as follows:

Sec. 5(a) (1). " * * * [U]nfair or deceptive acts or practices in commerce, are hereby declared unlawful." 66 Stat. 632, 15 U.S.C. 45(a) (1).

Sec. 5(a) (6). "The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using * * * unfair or deceptive acts or practices in commerce." 66 Stat. 632, 15 U.S.C. 45(a) (6).

Proceedings before the Commission

A. The complaint

The Commission's complaint charged that Leon A. Tashof, individually trading as New York Jewelry Company (NYJC)² at 719 Seventh St., N.W., Washington, D.C., in the course of advertising and selling merchandise (preponderantly on credit) principally to low income members of the public, has dealt with them unfairly and deceptively: (1) by advertising eyeglasses at \$7.50 which was not a bona fide offer, but which was for the purpose, and often with the effect, of inducing prospects to purchase glasses from NYJC at considerably higher prices; (2) by misrepresenting that NYJC sold eyeglasses at discount prices; (3) by misrepresenting NYJC credit policies and failing fully and adequately to disclose all credit charges and finance fees imposed and, in some cases, failing to disclose the total price to be paid under the credit instrument; and (4) by representing that NYJC extends "easy credit," whereas its credit policies are not easy in that (a) its prices include undisclosed credit charges and are unconscionably high, greatly exceeding the prices charged for like or similar merchandise by other retailers in the same trade area, (b) credit is extended without determining the customers' financial abilities to make their payments, and (c) as a result many are unable to meet their obligations whereupon NYJC often secures garnishments against their wages.

B. The examiner's decision

Following Tashof's answer, which generally denied the allegations of the complaint, hearings were held before an examiner of the Commission who, at their conclusion,

² Petition for review has been filed as "*Leon A. Tashof v. Federal Trade Commission*." This brief uses petitioner's name in the form it was used in the case before the Federal Trade Commission.

dismissed the complaint (ID 16).³ He held that the allegations had not been proved by a preponderance of the evidence (ID 5, 8, 14-15) and that the Commission "under Section 5 of the Federal Trade Commission Act does not have jurisdiction to regulate price controls or credit practices" (ID 15).

C. The Commission's opinion

On appeal by complaint counsel, the Commission, in an opinion written by Commissioner Jones without dissent,⁴ vacated the initial decision and entered its own findings, conclusions and order to cease and desist (Order 1, Op. 2). The Commission held that Tashof had violated the Federal Trade Commission Act substantially as charged, and its order prohibits the unlawful practices found (Order 2).

1. The \$7.50 advertisements of eyeglasses as a "bait and switch" tactic

The Commission held that those who read Tashof's newspaper advertisements or listened to his radio commercials would believe that Tashof was offering eyeglasses complete for \$7.50 and up, including necessary eye examinations, and that this belief was buttressed by extensive written and oral representations that eye examinations would be given free (Op. 7-10).

Finding that Tashof sold an insignificant number of eyeglasses, if any at all, for \$7.50 (or even at \$12.50—the \$7.50 advertised price plus the \$5 cost to Tashof per eye examination that petitioner contended was built into his price for eyeglasses), but that he did sell some 1,400

³ Abbreviations here used are as follows: "ID"—hearing examiner's initial decision; "Op."—Commission's decision; "Tr."—transcript of hearings before the examiner; "CX"—Commission exhibit; "RX"—petitioner exhibit (respondent below). Page numbers are to the original pagination of the record in accordance with F.R.A.P. Rule 30(c), 28 U.S.C.A.

⁴ Commissioner Nicholson did not participate as oral argument was heard prior to his appointment to the Commission (Order 5).

pairs a year at prices drastically higher, the Commission held that Tashof had engaged in bait and switch tactics, i.e., making an offer which is not bona fide in that the seller has no intention to sell the advertised product at the advertised price but is using the advertisement as a "come-on" to sell a higher priced product. Here, where petitioner's \$7.50 advertisement was run weekly for at least a year and a half, and his customers were persons of very limited financial means who would be expected to be anxious to purchase as cheaply as possible, the lack of sales at the advertised low price was held to raise the strong presumption that NYJC "had no eyeglasses available at the advertised price, or that they were so unsuitable to their purpose as to be unpurchasable, or that customers were 'switched' to higher priced glasses by some other means" (Op. 10-13).

2. Misrepresenting eyeglass prices as discount

The Commission found that Tashof's newspaper advertisements and radio commercials which represented his eyeglass prices to be bargain or discount prices were false, misleading and deceptive inasmuch as petitioner's prices averaged about twice as much as those generally prevailing in the trade area (Op. 17-18, Table A following Op.).⁵

3. The failure to disclose credit terms and total price to be paid

The Commission held that Tashof failed adequately to inform his customers of all finance charges imposed on

⁵ In making this price comparison, the Commission relied upon Tashof's own price records and the expert testimony of Dr. Zachary Ephraim, President of the Board of Examiners of Optometry in the District of Columbia and Vice-President of the D. C. Optometric Society, for an estimate of trade area prices (Op. 14-15). The Commission rejected petitioner's evaluation of Dr. Ephraim's testimony whereby petitioner purported to show that NYJC prices were comparable to those charged by others. The Commission pointed out that even under petitioner's own evaluation of evidence, NYJC's prices would, at best, be comparable to those charged in the trade area and so would not be discount or bargain prices (Op. 15-18).

them and failed in many instances to disclose the total price to be paid; and that these failures constituted unfair and deceptive acts and practices violative of Section 5 of the Federal Trade Commission Act (Op. 28-29).

The Commission analyzed each of three credit contract forms used by NYJC from December 1964 until issuance of the complaint in September 1966. The first type ("A") was held to be unfair and deceptive in that it called for $1\frac{1}{2}\%$ interest per month on the unpaid balance plus a 3% service charge compounded monthly, but did not disclose that this constituted 42% annual simple interest nor did it disclose the amount of finance charges in dollars or the total price to be paid (Op. 20, 25).

The second type form ("B") was held inadequate and deceptive in that, while it contained a space to insert the dollar amount of carrying charge, it did not disclose any percentage interest rate or carrying charge, either monthly or annually (Op. 20-21).⁶ The misleading nature of these contracts was demonstrated by computing the annual interest rate represented by the dollar amount of finance charges shown on the contracts. This ranged from 0 to 124%, and included widely divergent rates of interest charged the same customer on two different contracts executed the same day (Op. 22-24).

The third form ("C"), the one most recently used, was held misleading in that it called for a $1\frac{1}{2}\%$ monthly carrying charge on the unpaid balance, but did not indicate how much money this would be or who would decide how it was to be computed (Op. 21). For example, the promissory note executed contemporaneously with the contract provided for "interest on each installment at the highest lawful rate plus carrying charge of $1\frac{1}{2}\%$ per month on the unpaid balance compounded" (CX 47, 48, 66, 69). Further, a $1\frac{1}{2}\%$ carrying charge could be considered quite easy by NYJC's unsophisticated customers,

⁶ It did disclose a $1\frac{1}{2}\%$ monthly carrying charge plus interest "at the highest legal rate" on the balance after maturity (Op. 20), but did not disclose the extremely high annual simple interest rate this would constitute.

when it was not disclosed that this would amount to 18% on an annual basis; and NYJC failed to reveal the finance charge in dollars or even the customer's total obligation (Op. 22).

The Commission also found that many of the forms were executed with blank spaces that, if filled in, would have supplied the insufficient information called for by the forms (Op. 25).

In addition to the installment contract, the customer was given a "payment card" with which to keep track of his payments. This was held to add to the customer's confusion, inasmuch as it called for interest and carrying charges inconsistent with that stated on the contract and was unclear as to charges to be imposed on balances remaining unpaid after one year (Op. 21).⁷

As the Commission concluded (Op. 27-28):

In view of the inconsistency between respondent's payment cards, ledger cards, and various contract forms; the great disparity among the effective annual interest rates charged by respondent to various customers (including disparity charged to some of the same customers); the failure by respondent to provide all of the information called for in the contract forms which it did use; and the failure to disclose the annual interest rate, the amount of finance charges, or even the customer's total contractual obligation in its most recent contracts, we find that respondent's installment credit practices have the capacity to and do in fact deceive purchasers as to the actual cost of the credit and their total contractual obligation.

⁷ Balances remaining unpaid after a year were stated to be "subject to a carrying charge of 1½% on the unpaid balance." Thus it is unclear whether this was a reduction from, or increase upon, the "interest ½% per month. Carrying Charge 3% per month" noted on the booklet.

The Commission also noted that the ledger card which NYJC maintained for each account on which to record payments recited a monthly carrying charge inconsistent with the terms stated on some of the sales contracts (Op. 21).

4. The misrepresentation of "easy credit"

In evaluating NYJC's "easy credit" representations, the Commission considered the class of consumers to whom they are directed—those of low income whose marketing sophistication and know-how are minimal and who must purchase on credit but who have difficulty obtaining credit elsewhere—persons who are attracted by the credit offered and who translate the price of merchandise in terms of credit and assume that retailers in the same general area charge the same prices (Op. 31).

The Commission considered as an integral part of NYJC's "easy credit" representations its requirement of low or no down payments, low installment payments, the statement of interest charges in terms between 1½% and 3% and, in some cases, the apparent absence of any finance charge at all. It also considered that "easy credit" was being given by "Mr. Tash" (Tashof), purportedly a friend of the poor who wanted to give them the "good things in life" at bargain prices and on "easy credit;" and that Mr. Tash's sincerity could not be questioned since he offered free gifts and free eye examinations, and told them that even though other stores had turned them down they had "a preferred credit rating" with NYJC because NYJC appreciated the poor man's business and was willing to take a chance on him (Op. 31-32).

The Commission reasoned that, in the context in which made, NYJC's representation of "easy credit" did not mean merely that customers need not pay cash. Among other things, it was held to mean that credit charges would be reasonable, that the customer would be dealt with fairly on all matters including the consequences of a delayed or missed payment, and that all of NYJC's terms and prices were more favorable or at least not higher than those prevailing in the trade area (Op. 33).

Finding that NYJC consistently charged much more than prevailing trade area prices, and in view of NYJC's bewildering variety of finance charges ranging from 0 to 142% and other credit terms imposed, the Commission

held that NYJC did not extend "easy credit"; that, to the contrary, it was costing its customers dearly (Op. 33-40).

The Commission also held that it was not "easy credit" when NYJC extended credit to purchasers irrespective of their abilities to pay and then followed a rigorous collection policy to the extent of suing about every third customer; that customers were lured into assuming financial obligations which they thought would be easy, but which indebted them for overpriced merchandise beyond their capabilities, with subsequent lawsuits and garnishments.

The Facts

NYJC is a retail store at 719 7th St., N.W., Washington, D.C., owned by Mr. Tashof, who sets overall policy and exercises control (Tr. 135). The general manager, Eugene Ullman, performs general managerial duties including hiring, firing and supervision of employees, purchase of merchandise, pricing policies and setting of retail prices, writing advertising copy, and using discretion in day-to-day operations (Tr. 134-36, 159, 161, 165, 335, 343, 614-15). NYJC's 1965 sales were \$355,000 of which \$310,500 was gross profit. It makes 85% of its sales on credit and sues up to one of every three customers for collection. Watches, jewelry and eyeglasses account for 90% of sales; cookware, radios, used TV's and furniture, etc., make up the rest. The store is in a low-income marketing area. Many of its customers hold extremely low-paying jobs, have no bank accounts or charge accounts, do not own their own homes, are negroes who often have recently emigrated from rural areas or from the South, are in a low economic, educational and social status of life, and require personalized service or treatment from the merchants with whom they deal (Op. 2-4).

NYJC runs about 10 weekly spot commercials each on radio stations WOOK and WUST emphasizing that NYJC gives bargain prices and easy credit; that all are

eligible even if they never had credit, lost their credit or have been turned down by others. These are the personal representations of "Mr. Tash" (Tashof), who purportedly wants his listeners to enjoy the good things in life. NYJC advertises in the Washington Daily News emphasizing the same general themes of discount prices and easy credit. An NYJC employee stationed in front of the store tells passers-by they can get a free gift inside and gives them a card (CX 123) to be presented for the gift. The card states:

Because We Appreciate Your Business

MR. TASH, THE MGR., SAYS:

I'LL GIVE CREDIT TO EVERYBODY, EVEN IF
YOU NEVER HAD CREDIT, LOST YOUR
CREDIT, OR OTHERS HAVE TURNED YOU
DOWN.

A section of the card, which is perforated so it may be detached (Tr. 184, 401), is headed "CREDIT CARD" and reads:

NEW YORK JEWELRY COMPANY
719-7th STREET, N.W.—WASHINGTON, D.C.

Certifies that BEARER

is an AAA-1 Preferred Customer.

Instant Credit.

No Money Down.

Make Your Own Terms.

THIS CARD CERTIFIES THAT YOU HAVE A
PREFERRED CREDIT RATING AND ATTESTS
TO YOUR CHARACTER EXCELLENCE

The same card or handbill is used as a direct mailing piece (Op. 4-6).

NYJC advertises in the newspaper and on radio discount eyeglasses for \$7.50 and up, complete. Economy

prices are stressed (CX 56, 114). The newspaper advertisement, in the least prominent type of any, notes a "moderate examining fee." And NYJC does pay an optometrist \$5 per person to examine eyes and prescribe glasses. However, NYJC maintains a sign in its store, and for a time had one in its window, offering a free eye examination. It also mailed cards and stationed an employee in front of the store offering free examinations (Op. 4, 7-8). The Commission, from an examination of the advertisements in their entirety and in the context of NYJC's promotional and sales practices,⁸ therefore, found that NYJC's customers would expect to be able to purchase eyeglasses complete for as low as \$7.50 including an eye examination, if necessary (Op. 10).

NYJC did not sell a significant number of eyeglasses, if it sold any at all, at \$7.50 *with or without an eye examination*. NYJC stipulated that under 10 of some 1,400 sales per year were made at \$7.50. Statistics which may be projected to the period in question show that only one pair was sold for under \$17, 90% were sold for over \$23, 72% for over \$39, and 17% for over \$59⁹ (Op. 10-11, CX 115). Eyeglasses accounted for about 20% of NYJC's total sales (Tr. 136-37).

Not only were NYJC's prices not discount as advertised, but they averaged about twice as much as trade area prices (Op. 14-18, Table A to Op.). For example one customer, who went to the store for a free eye exam-

⁸ Its sales contracts describe the transaction as one for "glasses" or "optical service" without disclosing a separate eye examination charge. Also, when a customer purchases more than one pair of glasses, the price for each is often the same so that neither reflects the cost of an eye examination (Op. 9).

⁹ In reciting the percentages reflected in the uncontested statistics, the Commission's opinion (Op. 11) notes that the tabulation shows that 17% of eyeglass sales were at \$79.50. Actually, \$79.50 was the top price at which any eyeglasses were sold and the Commission intended to note that 17% were sold at the top range from \$59.50 to \$79.50. This typographical error is of no practical significance since the tabulation, in any event, clearly demonstrates that sales were uniformly made at prices many times higher than the \$7.50 advertised price.

ination, was told he needed three pairs of glasses—one for television, one for reading and one pair of bifocals—and purchased three pairs at \$59.50 each plus finance charges (App. A to Op., p. 1). Another customer who went to the store for a free eye examination ended up with two pairs of glasses, also at \$59.50 each (App. A to Op., p. 5).

NYJC replaces the suggested retail prices attached to Bulova watches it purchases with its own higher priced tickets. Whereas the trade area markup on Bulova watches approximates 100%, NYJC's retail prices average seven times cost (Op. 34-36). The sale of watches constitutes about 40% of total sales (Tr. 137). NYJC follows similar high markup policies on other merchandise (Op. 36-38).

NYJC offers easy credit to everyone, "Even if you never had credit, lost your credit, or others have turned you down." And NYJC extends credit indiscriminately well beyond its customers' capabilities of assuming the obligations (Op. 40-41; Tr. 454-62). For example, an elevator operator earning \$60 a week and with a wife and child to support went to NYJC for a free eye examination. He was told he needed *three pairs of glasses*, one for television, one for reading and a pair of bifocals, which he bought for \$59.50 each. Two months later, while he still owed \$213.30, NYJC sold him a Bulova watch for \$295, a cigarette lighter for \$24.95 and a heater for \$22.50. With \$63.54 carrying charges, this customer owed NYJC \$629, or 20% of his annual wages. Three months later, when in financial need, he pawned the "\$295 watch" for \$10 (App. to Op., p. 1; CX 9). Other examples follow.

A customer who earned \$79 gross every two weeks was sold a \$59.50 watch while he already had an existing account, raising his total debt to \$197.33 (App. to Op., pp. 1-2; Tr. 102-16). Another customer, who earned \$56 gross a week and had a wife and four children, was approached during his lunch break by an NYJC outside salesman and was sold a "Lord Tash" watch for \$89.50

(\$101.63 total). The salesman asked him no questions (not even the amount of his salary) other than how long he had been at his present job (App. to Op., p. 3; CX 4). A 19 year old waitress earning \$1.25 an hour with Government Services, Inc., with no other income, requested a free eye examination and was sold a pair of glasses she told the NYJC salesman she did not want for a total price of \$70.15, and a \$150 wedding set plus tax and finance charges. Her credit application did not even show her wages (App. to Op., p. 4; CX 5). Another customer, earning \$75 a week bought a pair of wedding rings for \$125 and two pairs of glasses for \$47. A week later, he bought a \$50 watch (App. to Op., p. 4; CX 6). A grocery clerk earning \$72 a week, with no other income, went into NYJC for a free eye examination and was sold a ring for \$79.50 and a pair of eyeglasses for \$59.50 which he did not want (App. to Op., p. 5; CX 7). A countergirl in a drugstore earning \$85 as the sole support for herself and five children went into NYJC for a free eye examination. She was told she needed reading glasses and sunglasses, which she bought for \$59.50 each plus \$21.42 in carrying charges (App. to Op., p. 5; CX 8). Still another customer, who earned \$97 biweekly, with a balance of \$106.06, contracted for a pair of glasses and two watches for \$119 for a new outstanding balance of \$225.06 (App. to Op., p. 6; CX 69).

NYJC maintains a complete up-to-date garnishment list against which it checks all applicants for credit (Tr. 184, 367, 412-13). And NYJC follows a rigorous collection policy. With some 5,000 customers, it sued 1,178 in 1964, 1,631 in 1965 and 707 in 1966. From January 1966 through February 1967, NYJC filed 411 garnishment proceedings (Op. 41).¹⁰

¹⁰ During the same 14 month period, firms with many more accounts brought garnishment proceedings as follows: The C & P Telephone Co.—19; The Hecht Co.—217; Kay Jewelers (with 10 branch stores in the Washington area)—202; Reliable Stores Corp.—305.

NYJC used three different credit contract forms during the period covered by the record, here referred to as forms "A" (December 1964 until December 1965), "B" (December 1965 to May 1966) and "C" (July 1966 to September 1966).

Form "A" (CX 17) calls for $1\frac{1}{2}\%$ interest on the unpaid balance plus a 3% service charge compounded monthly. It does not, however, reveal the 42% annual interest rate this constitutes, the dollar amount of finance charges, or the total price to be paid (Op. 20, 25). In addition to the high finance charges specified, NYJC inflated the dollar amount of the debt specified on "A" contracts. Thus CX 21 states the value and debt for three pairs of glasses as \$196.50, although they were sold for \$59.50 each—\$178.50 total (CX 9). And in CX 37, the debt for glasses purchased for \$59.50 (CX 7) is stated as \$71.50.

Form "B" (CX 1) contains spaces to show the dollar amount of carrying charge and the total amount due, but fails to disclose a monthly or annual rate. The annual rate reflected by charges shown on representative "B" contracts varied from 0 to 124%. Different effective annual rates were charged the same customer on two separate contracts executed the same day. Further, the carrying charge revealed on "B" contracts is not necessarily the only charge imposed (Tr. 306-07). In addition, form "B" calls for interest after maturity at the highest legal rate plus $1\frac{1}{2}\%$ per month on the unpaid balance, but fails to disclose the high annual rate this would constitute (Op. 22-24).

Form "C" (CX 47) calls for a $1\frac{1}{2}\%$ monthly carrying charge on the unpaid balance, but the promissory note at the end of the contract specifies "interest on each installment at the highest lawful rate" *in addition* to the $1\frac{1}{2}\%$ carrying charge. There is no indication as to what the annual finance rate would be, what the finance charges or total debt would come to in dollars, and who would decide how to compute this (Op. 21, 22).

The ledger card NYJC maintains for each customer (CX 70) recites only that there is a $1\frac{1}{2}\%$ monthly carrying charge on the unpaid balance. On the other hand, the "payment card" given to the customer (CX 24, 25) reads, "Interest $\frac{1}{2}\%$ per month. Carrying charge 3% per month." It also states that balances unpaid after a year are "subject to a carrying charge of $1\frac{1}{2}\%$ " without explaining the inconsistency respecting carrying and interest charges during the first year and thereafter (Op. 21).

In addition to the inconsistencies and the lack of adequate information provided by the contract forms, even when the information called for is inserted, numerous contracts were executed with many of the spaces left blank (Op. 25). Indeed, one contract in the record was signed by the customer but was left by NYJC otherwise entirely blank (CX 17), while others were executed in blank and filled in later by NYJC (CX 1, 19).

ARGUMENT

Preliminary Statement

This case, to a large extent, involves a review of Commission findings of fact, including findings as to the meaning of advertisements and whether representations therein made were false or deceptive, and findings as to whether conditional sale contract forms were unfair or misleading. It is well established that such findings of fact, when supported by substantial evidence, are conclusive. *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 488 (1951).

As this Court has stated, "The meaning of advertisements or other representations to the public, and their tendency or capacity to mislead or deceive, are questions of fact to be determined by the Commission and should be upheld by a reviewing Court unless arbitrary or clearly wrong." *Mytinger & Casselberry, Inc. v. Federal Trade Commission*, 112 App. D.C. 210, 217; 301 F.2d 534, 541 (1962); *Giant Food Inc. v. Federal Trade*

Commission, 116 App. D.C. 227, 232; 322 F.2d 977, 982 (1963), *cert. dismissed*, 376 U.S. 967 (1964).¹¹ As further stated in *Giant Food*, *ibid.*, "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but are governed by appearances and general impressions." This observation is particularly pertinent here, where NYJC's advertisements and contract forms were directed to uneducated and unsophisticated individuals.

It is also well established that the weight to be given to evidence and the inferences to be drawn therefrom are for the Commission, and are conclusive if reasonable or permissible. *Giant Food*, 116 App. D.C. at 235, 322 F.2d at 985; *Libbey-Owens-Ford Glass Co. v. Federal Trade Commission*, 352 F.2d 415, 417 (6th Cir. 1965). Inferences drawn by an administrative agency will not be set aside upon judicial review because the court would have drawn different inferences. *United States Retail Credit Association, Inc. v. Federal Trade Commission*, 300 F.2d 212, 221 (4th Cir. 1962); *Keele Hair & Scalp Specialists, Inc. v. Federal Trade Commission*, 275 F.2d 18, 21 (5th Cir. 1960).

In his discussion and application of the substantial evidence rule, petitioner (Br. 13, 24, 27, 34-37, 53) would afford undue weight to the findings of the hearing examiner. While the Supreme Court, in *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 496 (1951), held that the examiner's findings are to be considered, it stated that "The significance of his report, of course, depends largely on the importance of credibility in the particular case." Here, where the differences

¹¹ The Commission quite properly evaluated the documents from its own examination of them. There was no need to have called witnesses to attest to their understanding. *J. B. Williams Co. v. Federal Trade Commission*, 381 F.2d 884, 890 (6th Cir. 1967); *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523, 528 (5th Cir. 1963); *United States Retail Credit Association, Inc. v. Federal Trade Commission*, 300 F.2d 212, 217 (4th Cir. 1962).

between the Commission and the examiner that are relied upon by petitioner are based primarily upon an evaluation of documentary and other evidence and the weight to be given and inferences to be drawn, inconsistent findings of the examiner are of no particular significance. See *Mannis v. Federal Trade Commission*, 293 F.2d 774, 776 (9th Cir. 1961).

I. The Commission's finding that New York Jewelry Company advertised its eyeglasses for \$7.50 and that this was not a bona fide offer is supported by substantial evidence

After having frequently proceeded against instances of "bait advertising,"¹² the Commission, in November 1959, issued its "Guides Against Bait Advertising" in an effort to secure voluntary discontinuance of this unfair and deceptive practice. The practice, however, as illustrated by the present case, has been continued by various sellers.¹³

As defined in the Commission's Guides (2 CCH Trade Reg. Rep. ¶ 7,892; 16 CFR 238):

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous

¹² See, e.g., *Better Living, Inc.*, 54 F.T.C. 648 (1957), *aff'd*, 259 F.2d 271 (3d Cir. 1958); *Mid-Tex Corporation*, 54 F.T.C. 1581 (1958); *Schlossmans Inc.*, 53 F.T.C. 620 (1956); *Masterline Corp.*, 52 F.T.C. 220 (1955); *Lacy's Inc.*, 50 F.T.C. 730 (1954).

¹³ See, e.g., *Pati-Port, Inc.*, 60 F.T.C. 35 (1962), *aff'd*, *Pati-Port, Inc. v. Federal Trade Commission*, 313 F.2d 103 (4th Cir. 1963); *A. C. Weber & Co., Inc.*, 60 F.T.C. 289 (1962); *Aluminum Enterprises, Inc.*, 61 F.T.C. 293 (1962); *Morse Sewing Machine & Supply Corp.*, 61 F.T.C. 1078 (1962); *Excel Products, Inc.*, 61 F.T.C. 1119 (1962); *Wichita Sewing Center, Inc.*, 62 F.T.C. 1105 (1963); *Bernard Samuels*, 62 F.T.C. 1292 (1963). And see *Consumers Products of America, Inc. v. Federal Trade Commission*, 400 F.2d 930 (3d Cir. 1968), *cert. denied*, 393 U.S. 1088 (1969).

to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.¹⁴

The Commission's finding that NYJC engaged in "bait advertising" is clearly supported by substantial evidence.

A. NYJC advertised eyeglasses at \$7.50 complete, regardless of whether the customer brought in a prescription or had his eyes examined by NYJC

The Commission (Op. 7-10) held that NYJC's advertisements, both in the newspaper and over the radio, offered eyeglasses at \$7.50 complete regardless of whether the customer brought in a prescription or had his eyes examined by NYJC. While petitioner (Br. 12-13) takes issue with this construction of the newspaper advertisement, his brief nowhere contests the Commission's finding relative to the radio commercial.

NYJC's newspaper advertisement (CX 114) contains the bold-faced legends: "DISCOUNT EYE GLASSES," "MADE WHILE YOU WAIT," "Price includes lenses, frame and case," "From \$7.50 complete." The "\$7.50" is in particularly large print. The statements are followed in somewhat smaller type by, "Glasses Attractively Styled. Made Individually to Your Prescription." Then, in much smaller print, the smallest of the entire advertisement: "Oculists' prescription filled, or have your eyes examined by our registered optometrist. Moderate Examining Fee."

¹⁴ As noted in *Consumers Products of America, Inc. v. Federal Trade Commission*, *supra*, n. 13, 400 F.2d at 932, "In the words of the hearing examiner: 'This is nothing more than an age old bait and switch operation with the advertisement of the World Wide Encyclopedia being the bait to get the prospective purchaser's name and address and thereafter switch him to the New Standard Encyclopedia.'"

And see *Pati-Port, Inc. v. Federal Trade Commission*, 313 F.2d 103, 104 (4th Cir. 1963), where the court had "no hesitancy * * * in agreeing with [the Commission's] action in holding the [bait and switch] practices complained of to be illegal."

The advertisement, therefore, stresses discount eyeglasses complete from \$7.50, made individually according to prescription.¹⁵ The small print reference to a "moderate examining fee" stands apart from what is offered in bold face and could go unnoticed. Even if noticed, it would not occur to the unsophisticated and uneducated individuals to whom the advertisement is addressed that this qualifies or limits the offer of glasses for \$7.50 complete.

NYJC also advertised on radio, "I'll protect your eyes and protect your pocket book * * *. Mr. Tash brings you eyeglass service at economy prices. To protect your eyes he gives you complete eyeglasses including lenses and frame, for as low as \$7.50." The commercial then changed the subject to advertise lens and frame repairs and replacement. Then, "Oculist's prescriptions filled at low economy prices, or have your eyes examined by our registered optometrist," followed by additional easy credit and low price representations (CX 56). The commercial did not mention an examination fee, but offered "eyeglass service"¹⁶ at economy prices, "complete eyeglasses including lenses and frame, for as low as \$7.50." Not only did the commercial offer eyeglass service complete for \$7.50, but it reflects NYJC's intention to have its contemporaneous newspaper advertisements so construed.¹⁷

In addition to advertising complete eyeglass service or eyeglasses complete from \$7.50, NYJC had a sign in the store and in the front window offering free eye examinations (Tr. 314-15; CX 5). NYJC's representative in

¹⁵ The reference to eyeglasses complete, including lenses, would necessarily include the examination since lenses could not be supplied without an examination.

¹⁶ In a later commercial (CX 53), NYJC used the term "optical service" to encompass the eye examination as well as the glasses. And other commercials (CX 52, 54 and 55) coupled eye examinations and glasses as the sum product being sold.

¹⁷ The newspaper advertisements ran once a week for about a year and a half, with January 1965 being about the middle of the advertising period (Tr. 355). The radio commercial started in October 1964 (CX 55, 56).

front of the store and salesmen in the store offered free eye examinations (CX 6, 7).¹⁸ NYJC also mailed out cards and otherwise advertised free eye examinations (CX 8, 9). Customers were at no time told they were being charged for eye examinations, but were charged one price for the entire eyeglass service (Tr. 344-45).¹⁹ The customer's belief that the \$7.50 price included an eye examination was thus buttressed by NYJC's promotions and sales practices, whereby it purported not to charge for eye examinations.

The Commission's finding, therefore, that NYJC represented that complete eyeglass service, including glasses and examination, would be available from \$7.50 up is clearly supported by substantial evidence, and so should be affirmed (see *supra*, p. 15). Indeed, it is immaterial even if NYJC's advertisements could be understood by some readers, as contended by petitioner (Br. 12-13), as quoting a \$7.50 price only to those who already have a prescription from an ophthalmologist, for "if the 'advertisements * * * are capable of two meanings, one of which is false [they] are misleading.'" ²⁰

¹⁸ NYJC gave free eye examinations to anyone who came in with a "free gift" card (Tr. 312-13). These were handed out by the representative in front of the store (Tr. 364) and were also distributed by mail (Tr. 180).

¹⁹ The contracts simply described the transactions as involving "glasses" (CX 21, 37, 48, 66, 69, 74, 84, 99, 105, 111, 121) or "optical service" (CX 31, 43, 44, 62, 89, 94, 109, 112), with no indication of an additional charge for an examination. And when customers purchased more than one pair of glasses at a time, the price for each was frequently the same, neither reflecting the cost of the single eye examination that would have been given (CX 8; CX 9 and 21; CX 49 and 50; CX 74, 75 and 76; CX 91, 92, 94).

²⁰ *Giant Food Inc. v. Federal Trade Commission*, 116 App. D.C. 227, 231; 322 F.2d 977, 981 (1963), cert. dismissed, 376 U.S. 967 (1964); quoting from *Rhodes Pharmacal Co. v. Federal Trade Commission*, 208 F.2d 382, 387 (7th Cir. 1953), reversed in part, 348 U.S. 940 (1955).

B. NYJC's offer to sell glasses at \$7.50 was not bona fide

Despite advertising eyeglasses complete for \$7.50 every week in the Washington Daily News for a year and a half, as well as on radio (Tr. 355; CX 56), NYJC did not sell a single pair at that price to anyone who did not already have a prescription (Tr. 419, 421).²¹ And of some 1,400 pairs sold a year (Tr. 408; CX 115). NYJC admitted that less than ten were sold at \$7.50, *with or without an eye examination* (Tr. 419-20).²² Further, a tabulation of NYJC's eyeglass sales for the first six months in 1966 (CX 115), which may be projected to 1964 and 1965 (Tr. 316), discloses that no glasses were sold for \$7.50, or even at \$12.50 which would have reflected the \$7.50 advertised price plus NYJC's cost to give an eye examination.²³ To the contrary, NYJC sold only one pair for as low as \$15, 90% of sales were for over \$23, 72% for over \$39 and 17% from \$59.50 to \$79.50.²⁴ Of 685 pairs sold, the average price was \$41.70 and the median price, as well as the mode, was \$39.50.

When it is considered that for a year and a half NYJC regularly and frequently advertised glasses for \$7.50, but admittedly sold no more than nine pairs a year at that price,²⁵ it is clear that NYJC's purpose in

²¹ Even for panel sunglasses (lenses without refractive correction), where no eye examination was involved, NYJC's prices ran from \$17 to \$22.50 (Tr. 422).

²² As the Commission noted (Op. 10), this does not establish that there were in fact any sales at \$7.50. Commission counsel had requested a record of all eyeglass sales from January 1, 1964, to July 1, 1966, (Tr. 43-44) but, because of alleged burdensomeness, petitioner was allowed to stipulate as he did (Tr. 419-20).

²³ NYJC had the use of an optometrist to whom it paid \$5 per eye examination (Tr. 154-56).

²⁴ CX 115 shows sales as follows: \$15 through \$19.50—38 pairs; \$20 through \$24.75—44 pairs; \$25 through \$29.95—35 pairs; \$30 through \$34.50—44 pairs; \$35 through \$39.95—207 pairs; \$40 through \$49.95—188 pairs; \$54.50 through \$59.70—124 pairs; \$60 through \$79.50—5 pairs.

²⁵ As the Commission's Guides Against Bait Advertising notes: "*Sales of advertised merchandise. Sales of the advertised merchan-*

so advertising was not to sell glasses at \$7.50, but to entice persons interested in glasses in order to push glasses at higher prices. And its sales pressures are exemplified by its sale of three pairs of glasses to one customer—one for watching television, one for reading and a pair of bifocals—at \$59.50 each (CX 9, 21); sales to two other customers of two pairs at \$59.50 each (CX 8 and CX 91, 92 and 94); and the sale to still another customer of two pairs at \$79.50 each (CX 74, 75 and 76). As CX 115 shows, NYJC simply does not sell glasses for \$7.50. Indeed it is not even a low price seller, but charges about twice as much as its competitors. See *infra*, pp. 23-24.

It is inconceivable that NYJC's customers, typically people of very limited means and who, it may be inferred, would be anxious to buy as cheaply as possible, would have consistently purchased higher priced glasses if they had the honest choice to purchase at \$7.50.

As the Commission found (Op. 12), "We think these facts by themselves raise a strong presumption that either [NYJC] had no eyeglasses available at the advertised price, or that they were so unsuitable to their purpose as to be unpurchasable, or that customers were 'switched' to higher price glasses by some other means." And petitioner has not come forward with any evidence or argument that rebuts this presumption.²⁶

dise do not preclude the existence of a bait and switch scheme. It has been determined that, on occasions, this is a mere incidental byproduct of the fundamental plan and is intended to provide an aura of legitimacy to the overall operation."

²⁶ There is no merit to petitioner's assertion (Br. 15-17) that, because the complaint charged him with disparagement or discouragement of sales of eyeglasses at \$7.50, the Commission was required to introduce direct evidence of instances of such disparagement or discouragement. To the contrary, this is an instance where the Commission evaluated clearly established facts and made a most reasonable inference. Indeed, it would have been hard to reach a contrary conclusion. The Commission has the authority and responsibility to so weigh the evidence and draw inferences from established facts (see *supra*, p. 16). And there was no shifting

II. The Commission's finding that New York Jewelry Company misrepresented its eyeglass prices as discount is supported by substantial evidence

Petitioner's brief does not challenge the Commission's finding (Op. 13-18) that he misrepresented his eyeglass prices as discount. Respondent, nevertheless, includes this section in its brief as petitioner does challenge the Commission's finding (Op. 33-34), under another aspect of this case, that his prices for eyeglasses were substantially above prevailing trade area prices (Br. 43-56),²⁷ and much of the evidence is common to the two findings.

Contrary to NYJC advertisements, which emphasize that it sells eyeglasses at low discount prices,²⁸ it charges twice as much as the usual prices prevailing in the trade area for comparable glasses. This was established by Dr. Zachary Ephraim who testified as to usual trade area prices prevailing for specific glasses sold by NYJC.

Dr. Ephraim is well qualified to give such testimony. A 1947 graduate from the Columbia University School of Optometry, he has been practicing optometry in the District of Columbia for 18 years (Tr. 227). He is President of the Board of Examiners of Optometry in the District and is Vice President of the District of Columbia Optometric Society (Tr. 228), whose members constitute about 52% of the some 85 optometrists practicing

of the burden of proof, as contended by petitioner (Br. 15), for the Commission to have noted (Op. 13) that petitioner had introduced no evidence to rebut this inference or presumption.

²⁷ In contesting this finding, petitioner asserts (Br. 49, 55; Table 3, following Br. 43) that his prices are "in line" with or "fall within the same range as" those charged by others in the trade area. Thus, even under petitioner's contentions, his prices are not discount prices.

²⁸ E.g., "I'll protect your eyes and protect your pocketbook"; "Mr. Tash brings you eyeglass service at economy prices. To protect your eyes he gives you complete eyeglasses including lenses and frame, for as low as \$7.50"; "economy eyeglass service"; "low discount prices"; "Be thrifty! Go to [NYJC]"; "Protect your eyes and protect your pocketbook at the [NYJC] thrifty economical discount optical department" (CX 56); "DISCOUNT EYE GLASSES"; "From \$7.50 complete" (CX 114).

in the District (Tr. 228, 254). His estimates of usual prevailing prices for glasses were based primarily on his own knowledge of what members of the District of Columbia Optometric Society were charging (Tr. 229, 232, 235-36, 257-58, 265),²⁹ and he stated that nonmembers would charge considerably less (Tr. 261).

But even in comparison with the relatively high prices usually charged by members of the District of Columbia Optometric Society (as opposed to those charged by nonmembers), petitioner's prices were twice as high. This is demonstrated by Table A to the Commission's opinion, where the Commission has compared NYJC's prices charged for glasses in 13 specific instances with the usual trade area prices supplied by Dr. Ephraim.

The Commission was justified in comparing the prices of optometrists with those charged by NYJC since optometrists, like NYJC, both prescribe lenses and sell glasses (Tr. 227). Occulists or ophthalmologists are medical doctors who specialize in treating diseases and conditions of the eye and also prescribe glasses (Tr. 247-49). Of some 50 ophthalmologists in Washington, only one or two sell glasses (Tr. 254-55). A patient of an ophthalmologist would take his prescription to an optician—who sells glasses but does not examine eyes (Tr. 247, 249, 254-55). Clearly, a NYJC customer, who wants to buy "discount" glasses as advertised by NYJC, would not think in terms of "discount" when compared to going to an ophthalmologist for an eye examination and then going to an optician to have the prescription filled. He would think in terms of going to one source for his glasses complete including whatever was necessary to supply the proper glasses.³⁰

²⁹ When members of the Optometric Society meet they often discuss the prices they are charging (Tr. 256-57).

³⁰ Dr. Ephraim estimated that there are some 150 sources for eyeglasses in Washington (Tr. 258). With 85 optometrists, this would leave only 65 dispensers of glasses who are opticians. Also, as there are almost twice as many optometrists as ophthalmologists (Tr. 254), this further demonstrates that examination of eyes by and purchase of glasses from optometrists is the representative source of securing glasses for price comparison.

There is no basis for petitioner's assertion (Br. 48-49) that Dr. Ephraim's estimates as to usual trade area prices must be increased because of his testimony as to possible extreme price variations with regard to two pairs of glasses. Petitioner's representation that he sold eyeglasses at discount must be evaluated in relationship to the *usual* prices prevailing in the trade area. The prices given by Dr. Ephraim, and used by the Commission in Table A in comparison with NYJC's prices, were the usual prices charged by member optometrists (Tr. 235-39, 245, 265). Dr. Ephraim testified that these prices would not vary by more than \$2 or \$3 (Tr. 261-62). In giving the extreme variations among all outlets, relied upon by petitioner, it is pertinent to note that Dr. Ephraim asked whether to include NYJC and, when told to exclude NYJC, he testified, "If you exclude it, you cut down the range quite a bit" (Tr. 262).

This is exemplified by one of the two situations upon which petitioner relies. NYJC had sold a pair of glasses (CX 35) for \$59.50 (CX 8, 31). Dr. Ephraim (Tr. 242) estimated the *usual* trade area price for this pair of glasses as \$22.00. Upon cross-examination, he estimated the *extreme* range of prices among all outlets in the District for such glasses to be from \$7.95 to a high of \$30 (Tr. 285, 287). Thus, NYJC charged \$29.50 more than the highest price charged elsewhere.³¹ This situation also exemplifies petitioner's error in his Table 3 tabulations, where he relies upon Dr. Ephraim's estimate of extreme price variations relative to CX 35 and adds \$15 to all of Dr. Ephraim's estimates as to usual price (Br. 48). But in the very situation relied upon, Dr. Ephraim estimated the extreme high price to be only

³¹ Adjusting NYJC's price downward by \$5 (its cost of providing a "free eye examination" (see *infra*, p. 26)), NYJC charged \$24.50 more than the extreme high price charged elsewhere. Even raising its competitor's price by \$15 (the charge for an eye examination petitioner contends should be added to all of Dr. Ephraim's estimates (Br. 44-47)), NYJC still charged \$14.50 more than anyone else.

\$6 more than the usual price. Nevertheless, petitioner has added \$15. Further, the testimony was limited to this one pair of glasses and there is no basis for petitioner's generalization of adding \$15 to all estimates, particularly where he was not even correct in doing so in the individual situation relied upon.

The other situation upon which petitioner relies is that Dr. Ephraim estimated that the *extreme range* of prices for the glasses he was wearing would go from \$36 to \$50 (Tr. 263-64). Petitioner, however, neglected to ask Dr. Ephraim what the usual price was for his glasses. Thus, there is no basis for estimating what portion of the \$14 spread, if any, would be above the usual price. And the record does not show what petitioner charged for such glasses, or even if he handled them.

Again we emphasize, as did the Commission in its opinion (Op. 16-17), that *petitioner's prices are to be compared with the usual prices generally prevailing in the trade area, not with any assumed extreme high price.*

Since NYJC represents that its eye examinations are "free" (*supra*, pp. 19-20), the Commission would have been warranted in comparing optometrists' prices with those of NYJC without regard to the cost for an eye examination. However, to insure comparability, the Commission (Op. 16) has subtracted from NYJC's prices the amount of \$5 which it paid an optometrist for each examination. This optometrist does not spend all his time at NYJC, but comes in at NYJC's request to make an examination (Tr. 155-56). But even with this adjustment, NYJC's prices are still over twice as high as usual trade area prices (Table A to Op.).

In view of the foregoing, there is no basis for NYJC's contention (Br. 44-47) that trade area prices should be adjusted upwards by \$15 to reflect optometrists' charges for an eye examination. Even with such an adjustment, however, NYJC's prices were considerably higher than those of its competitors in nine of thirteen instances and

in the other four instances they were still slightly higher.³² NYJC, therefore, clearly misrepresented its prices as discount.

NYJC's gross profit margin on eyeglasses further demonstrates that its prices are not low, discount or economy. Note, *e.g.*, where NYJC charged \$39.95 for eyeglasses that cost it \$3.83 including postage (CX 81, 82, 83, 84); where it paid \$4.88 and charged \$44.50 (CX 85, 86); where it paid \$5.93 and charged \$49.50 (CX 87, 89); and where it paid \$3.28 and charged \$59.50 (CX 90, 91, 92, 94), over 18 times cost.³³

Petitioner (Br. 54) asserts that it provides more service than do most optometrists in that it furnishes one-day service. Actually, as Mr. Ullman testified, in the majority of cases NYJC provides "While-you-wait service" (Tr. 380). But the record indicates that this

³² Customer	NYJC Price	Usual Trade Area Price	Usual Trade Area Price Adjusted To Reflect a \$15 Eye Examination Charge
1. Freeman	\$59.50	\$22.00	\$37.00
2. Henry	\$59.50	\$22.00	\$29.50*
	\$59.50	\$24.00	\$31.50*
3. Taylor	\$59.50	\$28.00	\$33.00*
	\$59.50	\$22.00	\$27.00*
	\$59.50	\$22.00	\$27.00*
4. Hall	\$25.00	\$ 9.00	\$ 9.00**
5. Dennard	\$39.95	\$24.00	\$39.00
6. Cavanaugh	\$44.50	\$28.00	\$43.00
7. Wesly	\$49.50	\$32.00	\$47.00
8. Crowder	\$59.50	\$24.00	\$39.00
9. Logan	\$59.50	\$28.00	\$43.00
10. Calloway	\$42.95	\$26.00	\$41.00

* Where more than one pair of glasses was sold to a single customer, the charge for the eye examination has been allocated among the number of glasses purchased.

** Here, only the purchase of one lens was involved (CX 79; Tr. 277). It may be assumed that this is a replacement situation where no examination was required.

³³ In this instance, the customer purchased still another pair of glasses for \$59.50. Other "economy discount" prices include charging \$32.50 for glasses that cost \$5.38 (CX 100, 101) and charging \$42.50 for glasses that cost \$7.28 (CX 103, 105).

is a pressure tactic utilized by NYJC in that it makes up the glasses before the customer has really decided to buy them and then forces the customer to complete the purchase by advising him that he must take the glasses as they have been made up for him and cannot be sold to anyone else (see CX 5, 7).³⁴

III. The Commission's finding that NYJC failed to disclose credit terms and total price to be paid, and that these failures constituted unfair and deceptive acts and practices, is supported by substantial evidence and is otherwise in accordance with law

A. The conditional sale contract forms are unfair and deceptive by failing to provide adequate disclosure

1. Form "A," used from December 1964 to December 1965

This form (CX 17, 19, 21, 37, 38) calls for disclosure of the value of the articles purchased, the amount of down payment and the amount and schedule of future payments until the whole sum is paid. The form also requires interest "at the rate of $\frac{1}{2}\%$ per month on the unpaid balance" and "a service charge of 3% per month, compounded monthly."³⁵

The $\frac{1}{2}\%$ per month interest and 3% per month service charge may appear nominal to the unsophisticated NYJC customer, but the form is unfair and deceptive by fail-

³⁴ Petitioner asserts that Dr. Ephraim testified that it usually takes him three days to a week to deliver glasses, and petitioner assumes that this is representative of optometrists in general (Br. 54-55). Dr. Ephraim did not so testify. His testimony (Tr. 260) was that it takes that long for bifocals, depending on the prescription. And NYJC usually stocks only single vision lenses and secures special orders from a Texas firm when it needs bifocals (Tr. 416). Further, Dr. Ephraim, as do 60 to 70% of all optometrists, has his own laboratory (Tr. 230, 259), and maintenance of a laboratory does not increase the cost of the finished product to the seller (Tr. 260).

³⁵ This statement of interest and service charge is inconsistent with the terms of the accompanying promissory note physically printed at the end of the form which simply calls for "interest at the rate of — per cent per annum until paid."

ing to disclose that this constitutes a charge of 42% a year on the unpaid balance. The form also fails to disclose the service charge in dollars or the total amount in dollars that this high interest rate requires be paid.

Also unfair and deceptive was NYJC's practice of filling in the contract with a price to be paid considerably in excess of that at which the article was sold, and its practice of requiring, according to the printed terms of the contract, the payment of $\frac{1}{2}\%$ interest per month on the unpaid balance and a service charge of 3% per month compounded monthly. Thus the contract of a customer who purchased a watch for \$89.95 stated its value at \$101.63, payable \$2 every week until the entire \$101.63 should be fully paid (CX 4, 19). Another contract stated the value of three pairs of glasses purchased at \$59.50 each (\$178.50 total) as \$196.50 (CX 9, 21). Another contract stated the value of glasses purchased for \$59.50 as \$71.50 (CX 7, 37). Still another contract stated the value of a ring purchased for \$79.50 as \$87.40 (CX 9, 38). All of these contracts not only inflated the price of the article purchased, but also required the payment of $\frac{1}{2}\%$ interest per month on the unpaid balance plus a 3% monthly service charge compounded monthly.³⁶

³⁶ Petitioner's assertion (Br. 19-20) that the price shown on CX 37 is the total price charged (including both the cash price and the carrying charges) and that the buyer can ascertain the cash price by turning the contract sideways to read the cash register imprint figure, and can then determine the finance fee by subtracting the cash register imprint figure from the price shown in the body of the contract, serves to prove the unfairness, confusion and deception of Form "A."

In the first place, the dollar figure stamped sideways on CX 37 is not a part of the contract and would have no meaning to the customer even if he should notice it. And the cash register figures on CX 17, 19, 21 (other Form A contracts in the record) are indistinct. In the second place, the price shown in the body of contract is stated to be the "value" of the articles purchased. There is nothing in the contract to hint that this figure includes the finance charges. To the contrary, the contract in addition calls for the payment of interest of $\frac{1}{2}\%$ per month on the unpaid balance and 3% monthly service charge.

2. Form "B," used from December 1965 to May 1966

Form "B" (CX 1, 22, 31, 42, 62, 68, 74, 84, 89, 94, 99, 105, 109, 111, 112, 121) lists the selling price and adds a dollar amount of "Carrying Charge" for a total "Time Price" payable according to a schedule to be set forth. The form *makes no mention of any interest charge* in addition to the carrying charge and does not disclose either the monthly or annual percentage rate of the carrying charge. The unfairness and deceptiveness of the failure to make such disclosure is demonstrated in Table B of the Commission's opinion, where it computed the annual percentage of finance fees in those instances where sufficient information was disclosed to make such computations (Contracts 6-18, 20-22 of Table B). See, *e.g.*, contracts 8 (CX 43, 44) and 9 (CX 31) where the carrying charges constituted annual fees of 124% and 67%, respectively. Certainly, a failure to disclose that such exorbitant and highly inconsistent percentages were being imposed was unfair and deceptive.³⁷

On the other extreme, contracts 10-13 in Table B (CX 99, 105, 94 and 74) imposed no carrying charges. This, however, does not mean that the customer paid no interest or credit fee. For Mr. Ullman, NYJC's manager, conceded he could not tell from looking at the contract whether the customer paid any additional interest or charges; that this could be determined only by examining the customer's ledger card that is retained by NYJC (Tr. 306-08). Thus "B" contracts are incomplete in that they disclose only the amount of the *carrying charges*, but fail to disclose the additional *interest charges* that may be imposed.³⁸

³⁷ Compare contracts 7 and 8 (CX 42, 43, 44) where vastly different rates of interest were charged the same person on two contracts executed the same day.

³⁸ It is obvious that NYJC's interest and carrying charges are two separate impositions. Thus, Form "B" (CX 1), in the contract portion, relates only the "carrying charge," but the promissory note printed at the end of the form imposes a separate carrying

The promissory note printed at the end of the contract is inconsistent in that the contract calls for interest after maturity at the highest legal rate and a $1\frac{1}{2}\%$ monthly carrying charge on the unpaid balance, whereas the promissory note requires merely "interest on each installment after maturity at the highest lawful rate."

NYJC's manager's confusion in attempting to explain how interest and service charges were assessed in transactions utilizing Form "B" (see generally Tr. 190-204, 302-08) can only emphasize the confusion of the customer. While Mr. Ullman testified that carrying charges were imposed according to a system, the Commission's compilation of varying percentage charges on different contracts executed during this period (Table B to Op.) demonstrates the lack of any system.

The earliest method, according to Mr. Ullman (Tr. 201-04), was to assess a flat carrying charge of 20% (testimony later corrected to estimate 18%) on the purchase price, regardless of the time over which payment was to run. The time over which payment extends, however, is a crucial element in ascertaining annual interest rates. For example, an 18% charge for three months would amount to 72% on an annual basis. So this testimony demonstrates the exorbitant rates imposed and the unfairness and deception in not disclosing those rates to customers.

Later on, according to Mr. Ullman, NYJC used a chart, which he doubted was still available, to compute a sum based on a $1\frac{1}{2}\%$ monthly charge on the unpaid balance (Tr. 196-200).³⁹ But see Table B to the Commission's opinion, which demonstrates that no consistent interest rate was used.

charge and interest fee on debts not paid by maturity. Form "A," used prior to the one now under consideration (see *supra*, pp. 28-29), also called for a separate interest payment and service charge, as does the one used most recently (see *infra*, pp. 32-33). See also CX 24, 25.

³⁹ This testimony was later corrected to give 1% as the rate used in making the computation (Tr. 302-03).

According to Mr. Ullman, there was also a period when the policy was to impose a flat carrying charge of only \$1 (Tr. 302-03), although he could not remember how long that policy was in effect (Tr. 303-04).⁴⁰ But this could hardly have been a consistent policy since CX 68, executed only 5 days after and 7 days prior to other contracts charging \$1, imposed an \$8.43 carrying charge (see Table B to Op.). Of course, there were also the contracts on which no carrying charges were specified (see *supra*, p. 30), but Mr. Ullman was unable to explain why (Tr. 304-05) except to admit that interest charges could have been imposed which were not indicated on the contracts (see *supra*, p. 30).⁴¹

3. Form "C," used from July 1966 to time of hearings

Form "C" (CX 47, 48, 66, 69) requires the purchaser to pay the total "time price" (i.e., the cash price plus a "carrying charge" of $1\frac{1}{2}\%$ per month on the unpaid balance compounded monthly) in specified amounts at specified intervals, "in accordance with the terms of a certain promissory note of even date." The contract additionally has stamped on it in relatively large letters: "PURCHASE IS SUBJECT TO A CARRYING CHARGE OF $1\frac{1}{2}\%$ PER MONTH ON THE UNPAID BALANCE." However, the promissory note at the bottom of the form, which controls the method of payment, states that payment is to be made "*with interest on each installment at the highest lawful rate plus carrying charge of $1\frac{1}{2}\%$ per month on the unpaid balance compounded.*"

⁴⁰ Petitioner's supposition (Br. 23) that the \$1 carrying charge shown on various contracts represented a minimum charge on contracts with small face amounts or short terms conflicts with Mr. Ullman's testimony.

⁴¹ It is reasonable to assume that contracts calling for a carrying charge of \$1 were like those on which no charge was made—i.e., there was an interest charge which was not stated on the contract. This may also be assumed with respect to any contract, regardless of how high a carrying charge was stated.

The contract is unfair, misleading and deceptive in that it presents to the unsophisticated customer what appears to be a small carrying charge of $1\frac{1}{2}\%$ per month, but fails to reveal that this amounts to the substantial annual percentage of 18% and further fails to disclose the substantial additional and total cash sums that this entails.⁴² Further, the contract notes only the "carrying charge" but is subject to the promissory note which, *in addition*, imposes the highest lawful rate of interest.⁴³

4. Ledger card and payment card inconsistencies "

NYJC maintains a ledger card (as exemplified by CX 70) for each account on which payment notations are made (Tr. 181-82). Stamped on the card is the statement, "Purchase is subject to a carrying charge of $1\frac{1}{2}\%$ per month on the unpaid balance." This statement is inconsistent with the provisions of contract forms "A" and "B" (see *supra*, pp. 28, 30).

NYJC gives each customer a payment card upon which his payments are entered (Tr. 307; CX 24, 25). This

⁴² There is no merit to petitioner's assertion (Br. 24) that the total price to be paid could not be disclosed since it would vary with the rate at which payment is made. The contract calls for specified payments at stated intervals and the total price to be paid could be stated in accordance with the terms of the contract. Further, the prior form (Form "B") purported to set forth the dollar amount of the carrying charge and the total time price according to the length of time the contract was to run, or at least that is what Mr. Ullman testified (see *supra*, p. 31).

⁴³ Petitioner (Br. 24) asserts that the practice of charging $1\frac{1}{2}\%$ per month on the unpaid balance is common in the retail field. However, the charge here is failure to disclose what this amounts to. Further, petitioner's assertion, if accurate, serves to highlight its unfairness and deception in failing to disclose that it charges the highest lawful rate of interest in addition to the $1\frac{1}{2}\%$ carrying charge and the amount this comes to percentagewise and in total dollars. See 28 D.C. Code 3301, in effect at that time, which established the maximum legal rate at 8%.

⁴⁴ Petitioner's brief does not take issue with the Commission's findings relative to the inconsistencies in NYJC ledger cards and credit cards.

cards calls for $1\frac{1}{2}\%$ interest and 3% carrying charges per month, and therefore is inconsistent with the ledger card and contract forms "B" and "C" (see *supra*, pp. 30-32). The payment card also states that any balance unpaid after one year is subject to a $1\frac{1}{2}\%$ carrying charge. This provision is confusing as it purports to reduce the carrying charge from 3% to $1\frac{1}{2}\%$ if the party fails to pay his debt within a year, and also fails to mention any interest payment. Possibly this $1\frac{1}{2}\%$ is in addition to the 3% carrying charge and $1\frac{1}{2}\%$ interest originally imposed.

B. NYJC has failed to complete the conditional sale contract forms so as to provide even the limited information they would furnish⁴⁵

Not only are NYJC's contract forms inadequate to provide its customers with sufficient information, but NYJC has not even furnished the information called for by the forms. Thus we find an instance where a purchaser of a \$79.50 article signed both the sales contract and the attached promissory note in blank, and NYJC kept them in its files in this condition (CX 3, 17). Two other examples where customers signed contracts in blank are CX 1 and CX 4. In the first instance, the customer purchased a \$59.50 watch and signed the contract and note in blank. NYJC subsequently filled in the form to assess a carrying charge, add the total to an outstanding balance and designate the amounts and intervals of installment payments (Tr. 110; CX 1). In the second instance, the customer purchased a watch from an NYJC outside salesman for \$89.95. He signed the contract in blank and did not even know whom the salesman represented. A few days later he received a

⁴⁵ Petitioner's brief does not take issue with the Commission's findings (Op. 25-26) that NYJC, on numerous instances, failed to fill in the blanks with the information called for by the contract forms.

notice in the mail from NYJC telling him that they had his contract and that he owed \$101.63 to be paid at the rate of \$2 a week. The contract was filled in by NYJC to this effect, but the promissory note portion was not completed to indicate the rate of interest. The contract itself called for $\frac{1}{2}\%$ monthly interest on the unpaid balance plus a 3% monthly service charge compounded monthly (CX 4, 19).⁴⁶ See also CX 94 where the promissory note was signed in blank and CX 105 where the promissory note was signed but, except for the amount of the debt, is completely blank. For instances where the contract and note were left incomplete as to the amount and interval of payments and the note additionally failed to disclose the interest rate, see CX 21, 37, 38. And see CX 89 where the contract calls for installment payments of \$6 whereas the note calls for \$5 payments.⁴⁷

In addition to failing to complete its contract forms, NYJC has otherwise used them so as to be confusing and incomplete. Thus, on forms that already called for $\frac{1}{2}\%$ monthly interest on the unpaid balance plus a 3% monthly service charge, it substantially increased the stated value of articles over actual selling prices (see *supra*, pp. 28-29), and forms which added a "carrying charge" to the selling price to arrive at a "time price" (or which imposed no carrying charge) did not necessarily reflect all of the credit charges being imposed (see *supra*, p. 30).

⁴⁶ On the other side of the coin, see CX 43, 44, 68 where NYJC failed to have the customer sign the contract.

⁴⁷ And, as noted by the Commission (Op. 24, n. 1), CX 48, a sales contract, apparently incorporated the balance of a prior contract (CX 47) executed the same day. Both notes, however, were maintained by NYJC and could have been used as *prima facie* evidence of additional liability.

C. The proscription in the Federal Trade Commission Act of unfair and deceptive acts and practices encompasses NYJC's misleading credit practices, and its failure adequately to inform purchasers of all credit charges and fees and of the total price to be paid in credit transactions

Petitioner (Br. 9, 25-27) does not contest the Commission's authority under Section 5 of the Federal Trade Commission Act to proceed in matters involving credit. There would have been no basis for such a contention, for as the Commission stated (Op. 28):

The Commission has jurisdiction under Section 5 over unfair or deceptive acts and practices in commerce, and no exception is made in the Federal Trade Commission Act or any other act of Congress, for acts and practices involving credit. Indeed, the Commission has been actively enforcing Section 5 in the field of credit transactions for decades.⁴⁸

Petitioner contends only that the Commission's authority is limited to instances of misrepresentations regarding credit charges; that it does not extend to a failure to make affirmative disclosures. This contention, however, completely ignores the literal provisions of Section 5, the Congressional intent in choosing the language that it used, and numerous decisions under Section 5.

⁴⁸ The Commission's footnote to this statement cites *General Motors Corp.*, 30 F.T.C. 34 (1939), *aff'd*, 114 F.2d 33 (2d Cir. 1940); *Ford Motor Co.*, 30 F.T.C. 49 (1939), *aff'd*, 120 F.2d 175 (6th Cir. 1941); numerous other complaints, stipulations and orders concerning credit representations; and the Commission's 1951 Trade Practice Conference Rules Relating to the Sale and Financing of Motor Vehicles (16 CFR 197).

And see *Fortner Enterprises, Inc. v. United States Steel Corp.*, 394 U.S. 495, 508-09 (1969), where the Court, in a Sherman Act tying case, refused to distinguish credit from other kinds of goods and services. It is basic that violations of the Sherman Act also violate the Federal Trade Commission Act. *Federal Trade Commission v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394-95 (1953); *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 691 (1948).

Section 5 is not limited to "misrepresentations." Indeed, that word does not appear in the Section. Instead, the proscription is against "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." And there is no logic in petitioner's attempt to restrict the Section's application to misrepresentations that are unfair and deceptive, to the exclusion of failures to make adequate disclosure when those failures are unfair or deceptive. And, as fully developed *supra*, pp. 28-35, petitioner's failures to make adequate disclosure are most unfair and deceptive.

By declaring unlawful unfair methods of competition and unfair and deceptive acts and practices, the Congress gave the Commission a broad delegation of power to determine what was "unfair." It intentionally left development of that term to the Commission so it could cope with the many and variable unfair practices which then prevailed and which might be developed in the future through business ingenuity and legal gymnastics. *Atlantic Refining Company v. Federal Trade Commission*, 381 U.S. 357, 367 (1965). "New or different practices must be considered as they arise in the light of the circumstances in which they are employed." *Federal Trade Commission v. R. F. Keppel & Bro.*, 291 U.S. 304, 314 (1934). As Judge Learned Hand stated in *Federal Trade Commission v. Standard Education Society*, 86 F.2d 692, 696 (2d Cir. 1936), *rev'd on other grounds*, 302 U.S. 112 (1937), "[The Commission's] powers are not confined to such practices as would be unlawful before it acted; they are more than procedural; its duty in part at any rate, is to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop."

In carrying out its functions under the Act, the Commission, on countless numbers of occasions, has been sustained in holding that the failure to make disclosure of material facts constitutes unfair and deceptive acts and

practices.⁴⁹ And it is equally well established that the disclosure of a partial truth which omits pertinent information is a well-known method of deception against which the Commission may proceed.⁵⁰

There is no basis for petitioner's contention that these well-established principles do not extend to selling on credit, particularly since the use of credit in retail selling has developed to the point that it is a very important element in merchandising,⁵¹ particularly in the low-income market.⁵² In this connection, note the Commis-

⁴⁹ See, e.g., *Mary Muffet, Inc. v. Federal Trade Commission*, 194 F.2d 504, 505 (2d Cir. 1952); *Theodore Kagen Corp. v. Federal Trade Commission*, 109 App. D.C. 7, 283 F.2d 371 (1960), cert. denied, 365 U.S. 843 (1961); *Bennett v. Federal Trade Commission*, 91 App. D.C. 336, 338, 200 F.2d 362, 363 (1952); *J. B. Williams Co. v. Federal Trade Commission*, 381 F.2d 884, 890 (6th Cir. 1967); *Double Eagle Lubricants, Inc. v. Federal Trade Commission*, 360 F.2d 268 (10th Cir. 1965); *Feil v. Federal Trade Commission*, 285 F.2d 879, 896-97 (9th Cir. 1960); *Ward Laboratories, Inc. v. Federal Trade Commission*, 276 F.2d 952, 954 (2d Cir. 1960), cert. denied, 364 U.S. 827; *Keele Hair & Scalp Specialists, Inc. v. Federal Trade Commission*, 275 F.2d 18, 23 (5th Cir. 1960); *Royal Oil Corp. v. Federal Trade Commission*, 262 F.2d 741, 743 (4th Cir. 1959); *Haskelite Mfg. Corp. v. Federal Trade Commission*, 127 F.2d 765 (7th Cir. 1942); *L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F.2d 954, 956 (7th Cir. 1951).

⁵⁰ *P. Lorillard Co. v. Federal Trade Commission*, 186 F.2d 52, 58 (4th Cir. 1950). "Words and sentences may be literally and technically true and yet be framed in such a setting as to mislead or deceive." *Bockenstette v. Federal Trade Commission*, 134 F.2d 369, 371 (10th Cir. 1943); accord, *Bennett v. Federal Trade Commission*, 91 App. D.C. 336, 338, 200 F.2d 362, 363 (1952); *Koch v. Federal Trade Commission*, 206 F.2d 311, 317 (6th Cir. 1953).

⁵¹ In 1945, the total consumer credit debt, excluding real estate mortgages and insurance policy loans, was \$5.7 billion. By the end of 1968, this figure had risen to some \$113 billion including \$25 billion in consumer installment credit notes other than those covering personal loans, automobile purchases and home repairs and improvement. Federal Reserve Bulletin, February 1969, p. A-52 et seq.

⁵² As reported in the Federal Trade Commission's March 1968 Economic Report on Installment Credit and Retail Sales Practices of District of Columbia Retailers, low-income market retailers surveyed (all retailers in the District of Columbia with estimated annual sales of over \$100,000 who sold furniture and appliances) made about 93% of their sales through installment credit. And

sion's Trade Practice Conference Rules Relating to the Sale and Financing of Motor Vehicles, issued in 1951, which stated that it was an unfair trade practice to fail to furnish the buyer of a motor vehicle under an installment sale with an itemized disclosure of various costs, including details as to finance charges (16 CFR 197, 197.2).

There is no merit to petitioner's argument (Br. 26) that the recent enactment of the Truth in Lending Act (82 Stat. 146, 15 U.S.C. 1601), which requires affirmative disclosure of credit terms and makes a failure to comply in areas within the jurisdiction of the Federal Trade Commission a violation of the Federal Trade Commission Act, illustrates that the Commission had no authority to require affirmative disclosure of credit terms prior to enactment of the Truth in Lending Act. As demonstrated earlier, the Commission already had such authority under the general provisions of the Federal Trade Commission Act. And it is well settled that "when there are two acts upon the same subject, the rule is to give effect to both, if possible." The subsequent act may be deemed "merely affirmative, or cumulative, or auxiliary." *United States v. Borden Co.*, 308 U.S. 188, 198 (1939); *accord, Lietz v. Flemming*, 264 F.2d 311, 313-14 (6th Cir. 1959), *cert. denied*, 361 U.S. 820; *A.P.W. Paper Co. v. Federal Trade Commission*, 149 F.2d 424, 427 (2d Cir. 1945), *aff'd*, 328 U.S. 193 (1946).

And this is the relationship between the Truth in Lending and Federal Trade Commission Acts. The Truth in Lending Act establishes minimum standards of affirmative disclosure of credit terms as a matter of law, so that the Commission no longer need prove the unfairness and deception of failure to disclose on a case-by-

witness NYJC which made about 85% of its gross sales on credit (Tr. 151-52, 362), and competed by extensively advertising easy credit for everybody (Tr. 180, 184, 354, 401; CX 42, 52, 53, 54, 55, 114).

case basis.⁵³ The Commission's jurisdiction is expanded under the Truth in Lending Act from the "in commerce" limitation of the Federal Trade Commission Act to cover any creditor subject to the Truth in Lending Act. 82 Stat. 150, 15 U.S.C. 1607; H.R. Rep. No. 1397, 90th Cong., 2d Sess. (1968) (Conference Report by House Conferees on S.5, 90th Cong., 1st Sess.). The concept of unlawfulness for failure to make adequate disclosure of credit terms is expanded to various areas falling within the jurisdiction of numerous Federal agencies other than the Federal Trade Commission. 82 Stat. 150, 15 U.S.C. 1607. And, in addition, criminal liability is provided for willful and knowing violation. 82 Stat. 151, 15 U.S.C. 1611.

It has long been established that the Commission may proceed under Section 5 of the Federal Trade Commission Act against practices which violate the specific provisions of other trade regulation statutes, such as the Sherman Act and the Clayton Act, as well as against incipient violations thereof and conduct counter to the public policy declared therein. *Federal Trade Commission v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 (1953); *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 692-93 (1948); *Fashion Originators' Guild of America, Inc. v. Federal Trade Commission*, 312 U.S. 457, 463 (1941); *Federal Trade Commission v. Brown Shoe Co.*, 384 U.S. 316, 320-22 (1966). Thus the circumscription by Congress of certain business

⁵³ As Federal Trade Commission Chairman Dixon testified at p. 277 of the Hearings on the Consumer Credit Protection Act (Truth in Lending) before the Subcommittee on Consumer Affairs of the House Committee on Banking and Currency, 90th Cong., 1st Sess. (1967): "Under our basic law if we say it is deceptive we must prove deception. You draw this statute [Truth in Lending] and you say it shall be." And as Senator Douglas (considered to be the originator of the legislation) stated during the Hearings Before a Subcommittee of the Committee on Banking and Currency, United States Senate, 87th Cong., 2d Sess. on S.1740 (1962), at p. 158: "What this bill proposes to do is to set up an administrative process under which this principle is to become effective so that it does not have to be asserted by prosecutions by the Government."

conduct under a particular statute does not mean it is exempted from the Commission's broad Section 5 jurisdiction.

Moreover, the Truth in Lending Act follows the pattern long established by Congress to deal with particular trade practice problem areas. For example, passage of special legislation such as the Wool Products Labeling Act of 1939 (54 Stat. 1128 (1940), 15 U.S.C. 68) did not mean that the Commission had no prior jurisdiction over the misbranding of wool products. See *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483 (1922). The same is true regarding the other special legislation enacted subsequent to Section 5 of the Federal Trade Commission Act, i.e., the Fur Products Labeling Act,⁵⁴ the Flammable Fabrics Act,⁵⁵ and the Textile Fiber Products Identification Act.⁵⁶

There is nothing in the Truth in Lending Act or in its legislative history to indicate that the Commission did not already have authority to require affirmative disclosure of credit terms. To the contrary, the only discussion of this preexisting authority occurred during the hearings where Chairman Dixon of the Federal Trade Commission testified, and where he explained that the

⁵⁴ 65 Stat. 175 (1951), 15 U.S.C. 69 *et seq.* See H.R. Rep. No. 546, 82d Cong., 1st Sess. 3 (1951); *Hearings on H.R. 2321 Before House Committee on Interstate and Foreign Commerce*, 82d Cong., 1st Sess. 12, 21, 37, 160 (1951); H.R. Rep. No. 919, 81st Cong., 1st Sess. 2 (1949); *Hearings on H.R. 97, 3755 and 4292 Before a Subcommittee of House Committee on Interstate and Foreign Commerce*, 81st Cong., 1st Sess. 38-40, 55-56, 152 (1949); *Hearings on H.R. 5187 Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce*, 81st Cong., 1st Sess. 32, 34 (1949); H.R. Rep. No. 2004, 80th Cong., 2d Sess. 2 (1948); *Hearings on H.R. 3734 Before House Committee on Interstate and Foreign Commerce*, 80th Cong., 2d Sess. 50-51 (1948).

⁵⁵ 67 Stat. 111 (1953), 15 U.S.C. 1191 *et seq.* See H.R. Rep. No. 425, 83d Cong., 1st Sess. 4, 6, 11, 17-18 (1953); S. Rep. No. 400, 82d Cong., 1st Sess. 11, 18 (1953); S. Rep. No. 1869, 82 Cong., 1st Sess. 4 (1952).

⁵⁶ 72 Stat. 1717 (1958), 15 U.S.C. 70 *et seq.* See S. Rep. No. 1658, 85th Cong., 2d Sess. 1 (1958).

Commission already had such authority over transactions in commerce, including transactions in the District of Columbia, but that the proposed legislation would expand the Commission's jurisdiction to credit transactions in intrastate commerce. (See the Appendix to this brief for pertinent excerpts.)

IV. The Commission's finding that NYJC unfairly and deceptively represented that it offered "easy credit" is supported by substantial evidence

NYJC's repeated representation that it offers easy credit must be evaluated in the overall context in which it is made with due consideration to the class of persons with whom NYJC deals.

NYJC is located in a low-income market area where the system of merchandising is designed to appeal to low-income consumers, i.e., those whose incomes are barely sufficient to fulfill their minimal needs.⁵⁷ The customers normally do not qualify for credit in other than this type store; they have often recently emigrated from the South or from rural areas. They suffer a low status of life; are usually immobile economically, educationally, and socially; and normally require personalized service or treatment from the merchants with whom they deal (Tr. 425, 430, 432-33, 439-40). Most of NYJC's customers are negroes⁵⁸ who live in the District (Tr. 348). Among others, NYJC's advertisements for "easy credit" are directed to those who have never had credit (Tr. 160, and see CX 52, 54, 55, 123), and therefore are particularly naive in credit matters.

It is to this class of customers that "Mr. Tash," the petitioner, over the radio (WOOK and WUST), in newspaper advertisements (Washington Daily News), by

⁵⁷ As might be expected, NYJC's customers hold extremely low-paying jobs, have no bank accounts or charge accounts and do not own their own homes (see App. A to Op.; and CX 2, 20, 30, 36, 41, 46, 61, 64, 65).

⁵⁸ NYJC records the customer's race on his credit application form (Tr. 404; CX 2, 16, 20, 36, 41, 61, 64).

mail and by hand-outs in front of the store, repeatedly represents himself as a "grand gentleman" who "wants everybody to have the good things of life," who "gives credit to everybody," "whether you have never had credit, lost your credit, even if others have turned you down," who "appreciates your business" and who states, "If you'll take a chance on romance, I'll take a chance on you"; "I'll help you enjoy the good things of life."

Apparently because "Mr. Tash" is such a "grand gentleman" who is so concerned with the welfare and well-being of his fellow man, he repeatedly emphasizes that he offers "easy credit" with low down payment (or no down payment) with "easy credit terms," "budget terms to suit," and "a long time to pay." And he does so in conjunction with representations of "low discount prices," "low economy prices," "outstanding values" and items that are "low low priced." "Be thrifty" and "protect your pocketbook," says "Mr. Tash." (Tr. 180, 182-84, 354, 400-01; CX 52, 53, 54, 55, 56, 123).

"Mr. Tash" confirms his concern that everybody be able to take advantage of NYJC's "easy credit" by stationing an employee in front of the store to pass out New York Jewelry Credit Cards to passersby. This card "Certifies the Bearer is an AAA-1 Preferred Customer." It offers "Instant Credit. No Money Down. Make Your Own Terms," and states, "This card certifies that you have a preferred credit rating and attests to your character excellence" (CX 123; Tr. 180, 184, 400-01). Petitioner further demonstrates his benevolence by offering a free gift and free eye examination to anyone who will come into his store (Tr. 103-04, 180, 312-15, 364; CX 3, 5, 6, 7, 8, 9, 123).

In analyzing whether NYJC's representation of easy credit, under the circumstances recounted and to the class of customers involved, was unfair and deceptive, the Commission (Op. 8) recognized its responsibility to protect the most credulous, gullible and unsuspecting (see *supra*, p. 16). It found that NYJC's customers, who could not afford to pay cash for the type merchan-

dise sold by NYJC, would think only in terms of credit, equating price with credit and assuming that one offering "easy credit" would not charge substantially more than trade area prices.⁵⁹ This was deemed particularly true since "Mr. Tash" represented himself as their friend and benefactor who was going to assure that they got all the good things in life at bargain or discount prices, as well as on easy credit. To these people, "easy credit" would not mean merely that credit was easily available; it would mean that the credit would be easy for them in all aspects, including the credit terms imposed and their ability to handle the amount of credit extended without running the risk of lawsuits, including garnishments, under an exceedingly harsh and rigorous collection policy (Op. 31-33, 39-40, 40-44).

The Commission's analysis of the misrepresentation involved has not been challenged by petitioner, although he does assert (Br. 29-33) that the complaint was insufficient to inform him of what was alleged and that the Commission decided issues not raised in the complaint. The lack of basis for these assertions is demonstrated *infra*, pp. 55-58.

The Commission's findings (1) that NYJC does charge considerably more than trade area prices and does superimpose upon these prices credit terms which are themselves harsh and bewildering, and (2) that NYJC does burden its customers with heavy financial obligations without regard to their capacity to handle such obligations, and then follows a rigorous collection policy which subjects an unusually high percentage of its customers to lawsuits including garnishments, is clearly supported by substantial evidence.

⁵⁹ This is equally true when Mr. Tash "offers nationally advertised merchandise on 'ee-asy' credit" and names nationally advertised brands, including Bulova (CX 54). The customer is entitled to expect that he will not be charged more than nationally advertised prices for the nationally advertised brands.

A. The Commission's findings that NYJC charges considerably more than trade area prices and that its credit terms are harsh and unclear is supported by substantial evidence

As already demonstrated (*supra*, pp. 23-24), NYJC's prices for eyeglasses are at least twice as high as prevailing trade area prices. Since eyeglass sales account for about 20% of NYJC's total sales (Tr. 136-37), this in itself shows that a substantial number of sales are made at prices much higher than prevailing trade area prices and is persuasive evidence of NYJC's overall pricing practices in this regard.

An even larger category is that of watches, which account for about 40% of total sales. Representative of NYJC's pricing practices relative to watches is its pricing of Bulova watches.

Bulova watches arrive ticketed with suggested retail prices. NYJC, however, replaces these tickets with its own tickets bearing higher prices (Tr. 331-32, 334). All tickets placed on merchandise by NYJC bear a letter code which shows NYJC's cost as well as its retail selling price (Tr. 161-62, 172-73, 331). Merchandise is actually sold at ticketed prices (Tr. 174).

An invoice (CX 58) covering NYJC's purchase of a number of watches from Bulova had a handwritten notation pertaining to each style watch showing the cost letter code followed by a price.⁶⁰ Since the cost letter code and the retail price are the precise items NYJC places on the price ticket affixed to each item, the Commission (Op. 35) found that the handwritten prices on CX 58 were NYJC's retail prices for the individual watches. Stipulated testimony (CX 13, 14 and 15) establishes the retail selling prices of major jewelry retailers in the area for the identical watches. The following table shows, for each style Bulova watch purchased by NYJC,

⁶⁰ Mr. Ullman, NYJC's manager, confirmed that, with the exception of one digit on one item, the letter codes accurately reflected the cost shown on the invoice (Tr. 166).

its unit cost⁶¹ and NYJC's retail price as shown on the invoice, as well as the selling price of the other area merchants.

Unit Cost of Watch	Michael's Jeweler's Selling Price	Kent Jeweler's Selling Price ⁶²	Kay Jeweler's Selling Price ⁶³	NYJC's Selling Price
\$24.95		\$49.95	\$49.95	\$149.50
15.95	\$29.50		29.95	125.00
17.95			35.95	125.00
27.95	59.95		59.95	149.50
17.95	35.95	35.95	35.95	125.00
17.95		35.95	35.95	125.00
16.95		39.95	27.95	125.00
18.95	49.95	49.95	35.95	125.00

As demonstrated by this table, the trade area markup approximated 100%, whereas NYJC's prices averaged 7 times cost.

Petitioner (Br. 56-59) objects to the Commission's finding that the handwritten prices on CX 58 were NYJC's selling prices on the grounds that this and two other invoices (CX 57 and 59) were the only ones found in its files with such price notations; that Mr. Ullman testified it was not NYJC's practice to make such notations; and that he could not explain what they meant. The Commission, however, was justified in holding that the writings reflected retail selling prices, since Mr. Ullman did confirm that the coded cost prices were accurate, and such codes and retail prices are what NYJC places on its tickets attached to the merchandise (Tr. 161-62,

⁶¹ It may be assumed that the cost to NYJC and its competitors are substantially the same.

⁶² This jeweler is located on the same block of 7th Street as is NYJC (CX 14).

⁶³ This company has a chain of ten branch stores throughout the Washington metropolitan area, with five in the District including one on 7th Street only a block away from NYJC (CX 15).

166, 172-73, 331).⁶⁴ Mr. Ullman's denials that these were the retail prices can hardly be given much credence since it was his responsibility to set all retail prices (Tr. 161, 165, 335, 614-15), but he was unable to estimate the retail prices on any item listed on CX 57, 58 or 59 even though he had in hand the invoices showing the cost of each item (Tr. 169, 171-73, 329-30, 332-34).⁶⁵

Further, Mr. Howard Epstein, one of the Commission's complaint counsel, testified that he arranged with Tashof's counsel to visit NYJC on July 8, 1966, for the purpose of securing information as to petitioner's business practices, including documentation; that on July 8, he came to the store with Mr. Walter Gross, the Commission's other complaint counsel; that petitioner Tashof directed him to Mr. Ullman, describing him as his General Manager, responsible for day-to-day operations who would be able to furnish the requested information; that Mr. Tashof stated he was physically incapacitated and so preferred that Mr. Epstein and Mr. Gross talk to Mr. Ullman. Mr. Epstein testified that, in the presence of Mr. Tashof, Mr. Gross and Mr. Ullman, he requested to examine invoices covering NYJC purchases; that, still in the presence of all these people, he skimmed through invoices kept in a metal cabinet and, among others, removed CX 57, 58 and 59; and that *Mr. Ullman told him that the handwritten notations on those exhibits were the retail prices at which NYJC sold the merchandise* (Tr. 627-30, 634-36).

Mr. Ullman's statements constitute admissions against petitioner Tashof (1) because he was the general representative of Mr. Tashof's business with broad managerial responsibilities (see *supra*, p. 9),⁶⁶ and (2) because Mr.

⁶⁴ Further, not all NYJC employees knew the code (Tr. 167).

⁶⁵ It is inconceivable that NYJC did not have some sort of a pricing policy, particularly on nationally advertised merchandise such as Bulova watches, based on which Mr. Ullman could have estimated retail prices. Indeed, Mr. Ullman conceded that he is to some extent responsible for NYJC's retail pricing policies (Tr. 135).

⁶⁶ "The rule is well settled which permits the receipt of admissions made by an agent of a party when the agent's powers are broad

Tashof had specifically referred Commission counsel to Mr. Ullman for the information they sought.⁶⁷ Petitioner (Br. 60) asserts that it was improper for counsel in support of the complaint to testify to the effect that the penned notes on CX 57, 58 and 59 were NYJC's retail prices. It is well settled, however, that the attorney of a party is qualified to testify as a witness.⁶⁸

Further supporting the Commission's conclusion as to the meaning of the handwritten notes on CX 57, 58 and 59 is Mr. Ullman's vague testimony that when Commission counsel visited NYJC, they did discuss with him the various NYJC invoices selected, they may have asked him what the handwritten figures on CX 57 were and they may have conversed concerning the notations on all three exhibits (Tr. 325-27, 410). At no time did he deny that he told Commission counsel that these figures

enough to constitute him the general representative of the principal with broad managerial responsibilities." *Moran v. Pittsburgh-Des Moines Steel Co.*, 183 F.2d 467, 472 (3d Cir. 1950); *Dotson v. Pennsylvania R.R. Co.*, 142 F. Supp. 509, 510 (W.D. Pa. 1956). And see *Northern Oil Co. v. Socony Mobil Oil Co.*, 368 F.2d 384, 388 (2d Cir. 1966).

⁶⁷ Where a party refers another to a third party for information, the first party is bound by any admissions made. *General Finance, Inc. v. Stratford*, 71 App. D.C. 343, 109 F.2d 843 (1940); *Burwell v. Crist*, 373 F.2d 78, 80-81 (3d Cir. 1967). And see *Flinkkote Company v. Lysfjord*, 246 F.2d 368, 383 (9th Cir. 1957); *United States v. United Shoe Machinery Corp.*, 89 F. Supp. 349, 353 (D. Mass. 1950).

⁶⁸ As stated in *French v. Hall*, 119 U.S. 152, 154-55 (1886): "There is nothing in the policy of the law, as there is no positive enactment, which hinders the attorney of a party prosecuting or defending in a civil action from testifying at the call of his client. In some cases it may be unseemly, especially if counsel is in a position to comment on his own testimony, and the practice, therefore, may very properly be discouraged; but there are cases also, in which it may be quite important, if not necessary, that the testimony should be admitted to prevent injustice or redress wrong." This clearly is such a case. And see *United States v. Fiorillo*, 376 F.2d 180, 185 (2d Cir. 1967); *United States v. Alu*, 246 F.2d 29, 33-34 (2d Cir. 1957); *Alexander v. Watson*, 128 F.2d 627, 632 (4th Cir. 1942); *Christensen v. United States*, 90 F.2d 152, 154-55 (7th Cir. 1937).

did represent NYJC's retail prices. And, as stated by the Commission (Op. 37), "The inference that these were selling prices is certainly enhanced by [NYJC's] complete failure to offer any contradictory evidence whatsoever."

Still additional evidence that NYJC sold Bulova watches for about seven times cost is the sale of a Bulova watch to one Roland Taylor for \$295 (Tr. 577, 587; CX 9, 22). Invoices representing NYJC's receipt of watches from November 1965 to April 1966 show that the most NYJC paid for any Bulova watch during that period was \$39.95 (CX 58, RX 1, 3, 4, 6, 7, 8, 9, 10).⁶⁹ Even assuming that the watch sold to Mr. Taylor was the most expensive handled by NYJC, this demonstrates that the watch was sold at seven times cost.⁷⁰

Petitioner (Br. 60-68) belabors the admitted fact that the watch turned over by Mr. Taylor to Commission counsel and introduced by him into evidence as the watch Mr. Taylor purchased from NYJC for \$295 was in fact a different watch his wife got back from the pawnbroker where the \$295 watch had been pawned for \$10 (see Tr. 577-85, 587-89).⁷¹ But this does not alter the fact, as

⁶⁹ They show that NYJC purchased 6 Bulova watches at \$14.95, 5 at \$15.95, 8 at \$16.95, 21 at \$17.95, 4 at \$18.95, 2 at \$19.95, 3 at \$20.95, 2 at \$21.95, 3 at \$22.95, 1 at \$23.95, 2 at \$24.95, 2 at \$25.95, 3 at \$26.95, 2 at \$27.95, 3 at \$28.95, 2 at \$30.95, 2 at \$32.95, 4 at \$37.95 and 2 at \$39.95.

⁷⁰ NYJC (Br. 68) objects to this reasoning on the ground that the watch was purchased by Mr. Taylor in December 1965 whereas the invoices are dated from November 1965 through April 1966. The invoices, however, do reflect the cost to NYJC of Bulova watches over a representative six-month period and indicate that NYJC did not purchase Bulova watches for more than \$39.95. While Mr. Ullman testified that NYJC occasionally retails Bulova watches that wholesale at \$125 to \$150, he stated that they ordinarily do not stock such a watch and would probably secure it from another jeweler (Tr. 382). The watch sold to Mr. Taylor for \$295 was one NYJC already had in stock (Tr. 582-83; CX 9).

⁷¹ Counsel for NYJC, both on the record (Tr. 515) and in petitioner's brief (Br. 66, n. 7), expressed his confidence in the good faith of Commission counsel in this matter.

shown by NYJC's own conditional sales contract, that it sold a watch to Mr. Taylor for \$295 (CX 22) and that the most it paid for Bulova watches was \$39.95.

Still another and conclusive consideration is the fact that NYJC's 1965 gross sales were \$355,379.84 (Tr. 362) of which \$310,529.25 was gross profit (CX 124, *in camera*).⁷² These figures, therefore, both support the writing on CX 57, 58, 59 to the effect that NYJC did sell Bulova watches at more than seven times cost and constitute independent proof that it was NYJC's general pricing practice and policy to sell its products overall at almost eight times cost, a markup many times greater than that of its competitors'.⁷³

In addition to finding that NYJC's prices for eyeglasses and Bulova watches greatly exceeded those charged by its competitors for like merchandise, the Commission (Op. 36-38) also considered, but only as a matter of cumulative significance, evidence supporting the same conclusion with respect to NYJC's prices on its "Lord Tash" line of watches⁷⁴ and on its cookware, toaster, iron, clock radio and stereo items.

The "Lord Tash" watch sold for \$89.95 (CX 4, 19). The record includes invoices covering NYJC's purchase

⁷² This is the only year for which complete figures were furnished. Gross sales for 1964 were \$271,338.08 (Tr. 363).

⁷³ See the undisputed evidence (*supra*, pp. 45-46) that NYJC's competitors sold Bulova watches at 100% profit.

⁷⁴ Petitioner has not mentioned this matter in his brief. He has, however, argued extensively (Br. 69-78) that the selling price of a particular lot of transistor radios was lower than the price sought to be established by complaint counsel. The Commission, however, made no findings on this matter "since in our view a resolution of this factual issue is not material to our findings in this case" (Op. 38). Even if petitioner were correct in his assertion as to the prices at which these particular items were offered and sold, he still operated under an overall high pricing policy under which he realized \$310,529 gross profits on \$355,379 gross sales. Even Mr. Ullman testified that these radios were advertised at a special low price as a promotion to stimulate traffic (Tr. 546, 615). This would place the radios in a comparable position to the free gifts that NYJC gives to induce people to enter its store (see *supra*, p. 43).

of some 160 non-Bulova watches over a representative nine-month period (CX 60; RX 12, 13, 16, 17, 18, 19, 20). NYJC paid under \$13 for all but 11 of these watches and the most it paid was \$17.95. It may reasonably be assumed that NYJC's "Lord Tash" housebrand is reflected by one of these non-Bulova watches.⁷⁵

NYJC's high markup policy on the other items noted by the Commission is reflected by the handwritten retail price indications on CX 57 and 59⁷⁶ (see *supra*, pp. 46-49, for discussion of reliability of such evidence).

In addition to its unconscionably high prices, NYJC saddles its customers with undisclosed, bewildering and extremely harsh finance charges and terms. (See *supra*, pp. 28-35.)⁷⁷ This cannot be called "easy credit."

⁷⁵ Seventy six of the watches were purchased by NYJC for \$5 or less and 106 were purchased for under \$10. The highest price, 8 watches at \$17.95 each, was paid to Belforte Watch Company. Mr. Ullman testified that "Lord Tash" watches were secured from various sources including a firm named "Schwartz" (Tr. 318). RX 12 shows the purchase of six watches at \$11.50 each from "A. Schwarcz & Son."

⁷⁶ The following shows the type product in question, its unit cost to NYJC and NYJC's selling price, in that order, as reflected by CX 57 and 59: Toaster, \$5.49—\$49.50; Toaster, \$6.77—\$59.50; Iron, \$4.99—\$24.75; Iron, \$6.07—\$49.50; Cookware, \$6.47—\$69.50; Cookware, \$7.97—\$79.50; Cookware, \$14.07—\$59.50; Dormeyer Mixer, \$26.50—\$99.50; Clock Radio, \$23.45—\$99.50; Stereo, \$37.10—\$197; Stereo, \$50.75—\$250; Stereo, 78.25—\$295; Clock Radio, \$18.05—\$89.50.

⁷⁷ In addition to the undisclosed, harsh and bewildering finance charges, the following provisions are included, among others, in one or more of NYJC's conditional sale credit contract forms. The purchaser is to pay an extra \$1 for every payment 5 days late. He is to pay collection agency and attorney fees. If he defaults on any term of the contract, NYJC may, without notice, declare the entire amount due and payable and may take immediate possession without demand, including entry of the purchaser's property for such purpose. NYJC may sell the item at public or private sale, without notice to the purchaser, holding him liable for the balance due. In the event of discontinuance of payments, after due notice, NYJC may consider all sums paid as rental for use of the property. The purchaser is to reimburse NYJC at the rate of \$.50 for each letter, \$2 for each telegram, \$.50 for each phone call, \$10 for the expense incurred in obtaining a new home address or place of em-

B. The Commission's findings that NYJC burdens its customers with heavy financial obligations, without regard to their ability to handle such obligations, and then follows a rigorous collection policy which subjects an unusually high percentage of them to lawsuits is supported by substantial evidence⁷⁸

NYJC offers "credit to everybody. If you have never had credit, lost your credit, even if others have turned you down" (CX 52, 54, 55, 123); and it makes this offer to passers-by, giving them a NYJC "Credit Card" which "Certifies the Bearer is an AAA-1 Preferred Customer. Instant Credit * * *" and further "Certifies * * * [that the bearer] has a preferred credit rating and attests to [his] character excellence" (CX 123).

Edward Garretson, a qualified credit expert (Tr. 443-47),⁷⁹ examined numerous credit application forms on which NYJC had extended credit. He testified that he either would have rejected the applications or that there was insufficient information upon which a determination

ployment and \$5 anytime NYJC finds it necessary to send a personal representative to see the party in regard to payment of the account. The purchaser also must pay all costs in the event suit is incurred, regardless of whether judgment is secured (CX 1, 17, 47).

None of these terms are disclosed when NYJC offers its "easy credit."

⁷⁸ Petitioner's brief does not challenge these findings, but does assert (Br. 29-33) that he was not placed on notice that this was in issue. See *infra*, pp. 55-58 for demonstration of lack of basis for this assertion.

⁷⁹ Mr. Garretson is Vice President and General Manager of the Credit Bureau, Inc. of Washington, D.C. He is a member of the Associated Credit Bureaus of America, is on the legislative committee for that association and is on the research committee for the Northern Credit Bureau. He is Secretary of the Retail Credit Association of Metropolitan Washington, an educational association that trains credit personnel. He has written articles and lectured and taught in this field around the country for over ten years. He holds a BS degree from Rutgers in Business Management, has a certificate for work in credit management following four years of summer courses at Princeton, and has taken other credit collection and training courses for the various firms in the credit field he has worked for over the years.

to extend credit could have been based (Tr. 454-59, 461-62).⁸⁰

There is one criterion on extending credit, however, on which NYJC is not lax; and this has to do with garnishments. It maintains a current list of all garnishments that have been filed by all creditors in the District of Columbia and checks all applicants for credit against this list (Tr. 184, 367, 412).⁸¹ Once the applicant has qualified on this score, NYJC burdens him with financial obligations without regard to his ability to handle them. The following examples are most revealing.

Ronald Taylor, an elevator operator earning \$60 a week to support himself, his wife and child, was told he needed three pairs of glasses—one for television, one for reading and a pair of bifocals. He was charged \$59.50 for each pair plus finance charges. Two months later, when his outstanding balance was \$213.30, NYJC sold him a watch for \$295, a cigarette lighter for \$24.95, and a heater for \$22.50. With \$63.54 carrying charges, Mr. Taylor owed NYJC \$629—about 20% of his annual wages. Three months later, when in financial distress, Mr. Taylor pawned the "\$295 watch" for \$10 (Tr. 577, 580, 584, 587; CX 9, 21).

Preston White, who earned \$79.50 gross every two weeks at the Pentagon cafeteria, was sold a watch for \$59.50 while he already had a \$134.65 outstanding balance (Tr. 102-06; CX 1).

Walter Whitfield, while earning \$56 per week gross as the sole income to support his wife and four children, was sold a watch for \$89.50 (\$101.63 on the contract) by an NYJC outside salesman who approached him during his lunch break, and obtained no information other than

⁸⁰ Note that Mr. Garretson's testimony was cut short after the examiner agreed with counsel for NYJC that his testimony was becoming cumulative (Tr. 462).

⁸¹ NYJC maintains a thermofax machine in the Clerk's office of the D.C. Court of General Sessions and copies each day's list of garnishments (Tr. 412).

how long Mr. Whitfield was employed at his present job (CX 4, 19).

Synithia Washington, a 19 year old waitress at a Government Services cafeteria, earned \$1.25 an hour and was sold a pair of glasses for \$59.50 (\$70.15 total) that she did not want⁸² and a wedding band set for \$150. With an existing account of \$91.15 and the more recent purchases plus carrying charges, this girl who earned but \$1.25 an hour was saddled with a \$342.80 debt (CX 5, 42, 43, 44).

Johnnie Johnson, a 20 year old truck driver earning \$75 a week, purchased a pair of wedding rings for \$125 and two pairs of glasses for \$47 (one prescription for \$29.50 and one pair of sunglasses for \$17.50). A week later he purchased a watch for \$50 (CX 6, 46, 47).

John Freeman earned \$72 a week as a stock boy in a grocery store. He was sold a ring for \$79.50 and a pair of glasses for \$59.50 that he did not want.⁸³ On the contracts, the glasses were valued at \$71.50 and the ring at \$87.40 for a total obligation of \$158.90 (CX 7, 36, 37, 38).

Mrs. Minnie Fitzgerald worked as a counter girl in a drugstore for \$85 every two weeks. She was the sole support of herself and five children. She was told she required sunglasses and glasses for reading. She was charged \$59.50 for each pair plus \$21.42 carrying charges. After paying \$5 down she had a credit obligation of \$135.42 (CX 8, 31) for glasses containing the weakest possible lenses that could be put into a pair

⁸² After securing a free eye examination, Miss Washington was asked to select a frame. She said she didn't want any, but after being kidded, chose a pair she liked. The finished glasses were presented to her before she left the store. When she said she didn't want them, she was told they had been made up for her and they could not be sold to anyone else (CX 5).

⁸³ After receiving a free eye examination and while looking at other merchandise, Mr. Freeman was told his glasses would be ready in a few minutes. He said he did not want any glasses, but was told he had to take them as they were made to fit him and could not be sold to anyone else (CX 7).

of frames. There are none ground weaker in stock lenses.⁸⁴ This reflects on the necessity of burdening Mrs. Fitzgerald with a \$135.42 credit obligation for two pairs of glasses.

Arthur Pratt earned \$97 biweekly. His wife worked as a domestic two days a week. At the time he had an outstanding balance of \$106.06, he was sold a pair of glasses and two watches for a total of \$119, and thus became obligated to NYJC to the extent of \$225.06 plus finance charges (CX 64, 65, 69).

While NYJC readily burdens all applicants who have jobs and whose wages are not being garnisheed with extensive financial obligations, it counters this practice with a very rigorous collection policy. With some 5,000 accounts sold each year (Tr. 520), NYJC sued 1,178 customers in 1964, 1,631 customers in 1965 and 707 customers in 1966. From January 1966 through February 1967, it filed 411 garnishment proceedings⁸⁵ (Tr. 483-86). Thus in 1965, NYJC sued 32% of its current accounts. Whatever NYJC's credit policies may constitute they do not amount to "easy credit."

V. The complaint reasonably placed petitioner on notice that his representations as to "easy credit" were alleged to be false, misleading, deceptive and unfair in the respects ultimately found by the Commission

Petitioner (Br. 29-33) asserts that Paragraphs Seven and Eight of the Commission's complaint (complaint 3-4) failed reasonably to apprise him with what was charged; that, in any event, the crux of the charge was

⁸⁴ This was testified to by Dr. Ephraim, the President of the Board of Examiners of Optometry in the District of Columbia and Vice President of the District of Columbia Optometric Society (Tr. 246).

⁸⁵ During the same 14-month period the C & P Telephone Company filed 91 garnishments; the Hecht Company filed 217; Kay Jewelry (with 10 branch stores in the area) filed 202; and Reliable Stores Corp. (which includes The Hub and Kent Jewelers among others) filed 305 (Tr. 486-87). All of these undoubtedly had many more accounts than NYJC.

simply that his prices were unconscionably high by greatly exceeding those charged by other sellers in the same trade area for similar merchandise; and that the Commission interjected a new theory into the case when it analyzed Paragraphs Seven and Eight as follows (Op. 29-30) :

As we read these paragraphs they contain a number of interrelated allegations dealing with several aspects of one basic problem—the deceptive use of credit—and specifying two respects in which [petitioner's] credit is not "easy"—because its cash prices are unconscionably high or greatly in excess of other prices in the trade area; and because [petitioner], after giving the appearance of dealing quite leniently with credit customers, rigidly enforces its credit rights against customers who have been lured into their contractual arrangements by [petitioner's] "easy credit" marketing practices.⁸⁶

Petitioner's contentions are demonstrated to be baseless by a reading of Paragraphs Seven and Eight (complaint 3-4). Paragraph Seven (1) relates the manner in which petitioner lures potential customers into his store and gains their confidence by offers of free gifts and free eye examinations, and then, after first ascertaining that the recipients have jobs so that garnishments can be secured, represents that the recipients' credit is good and they can purchase anything in the store on "easy credit." Paragraph Seven (2) then specifically alleges:

Without determining his customers' financial ability to pay or their credit rating [petitioner] sells merchandise to them on "easy credit terms" at unconscionably high prices that greatly exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash.

⁸⁶ See *supra*, pp. 42-55, for analysis of how petitioner violated Section 5 as charged in these paragraphs of the complaint.

Paragraph Eight alleges that by means of the acts and practices set forth in Paragraph Seven, and other similar acts and practices, petitioner induced uninformed and low-income members of the public:

* * * to purchase merchandise on credit terms that, contrary to [petitioner's] representations, are not easy because of the fact that the prices charged by [petitioner] for such merchandise are unconscionably high and greatly in excess of the reasonable or fair market value of such merchandise.

Paragraph Eight also alleges:

[Petitioner] extends credit to such customers without determinning their credit rating or their financial ability to meet their payments. As a result many of such customers are unable to make their credit payments whereupon [petitioner] seeks, and often with success, to obtain garnishments against their wages.

There is, therefore, no merit to petitioner's attempt to fault Paragraphs Seven and Eight of the complaint, particularly in light of the well-established principle that administrative complaints need not meet the relatively strict standards required in court proceedings. *A. E. Staley Mfg. Co. v. Federal Trade Commission*, 135 F.2d 453, 454 (7th Cir. 1943). As stated in *Armand Co. v. Federal Trade Commission*, 84 F.2d 973, 974-75 (2d Cir. 1936), *cert. denied*, 299 U.S. 597:

At least in a contested case there must be an entire abandonment of the very substance of the dispute to which the defendant was summoned, and the substitution of another which he could not have anticipated, and which he had no opportunity to meet.

Here there clearly was no such variance between the complaint and the Commission's opinion. See *J. B. Williams Co. v. Federal Trade Commission*, 381 F.2d 884, 888 (6th Cir. 1967); *Federated Nationwide Wholesalers Service v. Federal Trade Commission*, 398 F.2d 253, 258 (2d Cir. 1968); *Continental Wax Co. v. Federal Trade*

Commission, 330 F.2d 475, 479 (2d Cir. 1964); *Colgate-Palmolive Co. v. Federal Trade Commission*, 310 F.2d 89, 91-92 (1st Cir. 1962).⁸⁷

VI. The Commission's choice of order to cease and desist is within its allowable discretion

Petitioner's overall objections to the Commission's choice of remedy (Br. 79-84) are completely refuted by the following well-established principles relating to Commission orders to cease and desist.

"The Commission has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices." *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 611 (1946). It "must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity," *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952), for "those caught violating the Act must expect some fencing in." *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 431 (1957). The Commission's determination of the required scope of an order will not be disturbed unless the order has no reasonable relation to the unlawful practices found. *Jacob Siegel Co. v. Federal Trade Commission*, *supra*; *accord*, *Federal Trade Commission v. Mandel Bros.*, 359 U.S. 385, 392-93 (1959).

Many of petitioner's objections, including the contention that the Commission has no jurisdiction under the general provisions of Section 5 of the Federal Trade Commission Act to require affirmative disclosure of credit terms (Br. 81-83),⁸⁸ are merely restatements of petition-

⁸⁷ Petitioner's reliance (Br. 32-33) upon *Rodale Press, Inc. v. Federal Trade Commission*, — App. D.C. —, 407 F.2d 1252 (1968), is completely misplaced. In that case, this Court held that the theory of the complaint differed from the theory upon which the Commission ultimately sustained the complaint (407 F.2d at pp. 1255-57). Here, there is no such variance.

⁸⁸ See *supra*, pp. 36-42, for discussion of the Commission's authority to act with regard to the failure to make adequate disclosure of credit terms.

er's arguments relative to the merits of the Commission's findings of violation. These contentions have been fully disposed of in the previous portions of this brief and need not be reiterated here.

With respect to credit information, the further contention is made (Br. 81-84) that, in any event, the Commission's order must be limited to the requirements of the Truth in Lending Act and Regulation Z issued thereunder by the Federal Reserve Board. This contention, however, misconceives the nature of the instant case. The Commission has not found Tashof to be in violation of law for failure to make the disclosures required by the Truth in Lending Act. To the contrary, it found that his credit sales were unfair, misleading and deceptive under the general provisions of the Federal Trade Commission Act because he failed to make disclosures deemed necessary under the circumstances developed in the record of this case. Correspondingly, in drafting an appropriate order, the Commission was not limited to the specific affirmative disclosures required under the Truth in Lending Act, but was required to exercise its judgment to provide adequate protection for the particularly unsophisticated, naive and gullible customers of NYJC under the particular circumstances demonstrated in this case.⁸⁹

Clearly the Truth in Lending Act, which was adopted to afford protection to recipients of credit by imposing certain minimum affirmative disclosure requirements, should not be construed to limit the Commission's authority to draft orders relevant and appropriate to the facts of a particular case. Lesser requirements under

⁸⁹ The Commission, of course, considered the requirements of the Truth in Lending Act and in large part drafted its order to conform with that Act. See Paragraphs 4, 5 and 6 (Order, pp. 3-5). And it stated that:

For purposes of paragraph 4-6 of this order, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under [§ 106 and § 107 of] Public Law 90-321, the "Truth in Lending Act," and the regulations promulgated thereunder.

a particular statute dealing with the same subject matter do not limit the authority of the Commission to protect consumers under the general provisions of the Federal Trade Commission Act. *W.M.R. Watch Case Corp. v. Federal Trade Commission*, 120 App. D.C. 20, 22-23; 343 F.2d 302, 304-05 (1965), *cert. denied*, 381 U.S. 936; *Baldwin Bracelet Corp. v. Federal Trade Commission*, 117 App. D.C. 85, 86-87; 325 F.2d 1012, 1013-14 (1963). See also *Decker v. Federal Trade Commission*, 85 App. D.C. 137; 176 F.2d 461 (1949), *cert. denied*, 338 U.S. 878; *L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F.2d 954, 956-57 (7th Cir. 1951).

In any event, as conceded by petitioner (Br. 82-83), the affirmative disclosure requirements of the Commission's order (Paragraphs 4, 5 and 6) are substantially the same as those of the Truth in Lending Act. Petitioner objects that Paragraph 4(b) of the order requires disclosure of the "time price" (i.e., the sum of the cash price and all finance or extra charges less down payment) whereas Section 144 of the Truth in Lending Act does not include such a requirement. Section 226.8(b) (3) of Regulation Z, promulgated in implementation of the Truth in Lending Act, however, does impose such a requirement.⁹⁰ And the propriety of including such a requirement to protect NYJC's uneducated and unsophisticated customers is self-evident.

Petitioner (Br. 83) objects to the fact that the requirement of Paragraph 6(g) of the order to disclose the finance charge as an annual percentage rate has no minimum dollar exemption, as does Section 128(a) (7)

⁹⁰ Section 226.8(b) (3) of Regulation Z (12 CFR 226.8(b) (3)) requires disclosure of "The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling and except in the case of a sale of a dwelling, the sum of such payments using the term, 'total of payments'."

This also disposes of petitioner's objection (Br. 83) that a similar provision in Paragraph 6(h) of the order does not appear in Section 128 of the Truth in Lending Act. It does appear in Section 226.8 (b) (3) of Regulation Z.

of the Truth in Lending Act. This feature of the order was carefully considered by the Commission (Op. 50):

We have also concluded that it is essential that the disclosures required to be made in paragraphs 4 and 6 be made with respect to *all* credit transactions. The Consumer Credit Protection Act exempts certain sales from its disclosure requirements (Section 128(a)(7)(A) and (B)). Many of [petitioner's] sales have involved finance charges of less than \$5.00. As Table B attached illustrates, the true annual percentage of these finance charges was substantial, ranging from 15% to 45% (contracts 14-20 in Table B). On small purchases with credit extending only over a brief period of time, finance charges of less than \$5 can represent a very substantial percentage rate, and customers solicited by this [petitioner] must have some idea of how costly the credit is which [petitioner] is seemingly so generous in extending. Accordingly, we have concluded that [petitioner] must make the required disclosures with respect to all of its credit transactions.

Objection is also made (Pet. Br. 83-84) that the order requires oral as well as written disclosure, whereas the Truth in Lending Act requires only that the appraisal of credit terms be in writing. Again this aspect of the order was determined by the Commission to be appropriate to the requirements of this case (Op. 49-50):

A substantial proportion of [petitioner's] customers lack sophistication and education (see Appendix A to this opinion). It is unlikely that many of them could read and clearly understand all of these terms as they are contained in the written contract. Therefore in our judgment it is essential that [petitioner] be required to make these disclosures orally to its customers at the time when the price or the terms of credit are *first* discussed or referred to with the customer.⁹¹

⁹¹ Petitioner expresses fear that the requirement to make oral disclosure will subject him to dispute as to whether the information was given. But petitioner should not be relieved from dispensing

While petitioner fails to develop the contention in the argument portion of his brief, his Summary of Argument includes the statement (Br. 9) that "to the extent that the Commission's order corresponds with the requirements of the Truth-in-Lending Act, it is unnecessary." This argument is nothing but an effort to get another bite at the apple. The Truth in Lending Act is not self-executing. The Commission would have to proceed with respect to a violation of that Act by issuance of a new complaint under Section 5 of the Federal Trade Commission Act in order to secure a final order to cease and desist. Here, where petitioner has flagrantly violated the Federal Trade Commission Act, in some respects by activities covered by the Truth in Lending Act, there is every reason to secure a final enforceable order to cease and desist to protect the public interest as expeditiously as possible.

Paragraph 2 of the order requires that Tashof cease and desist from representing that any merchandise is sold at discount or at a price below that charged by others unless he shall have conducted, within 12 months of making the representation, "a statistically significant survey" of principal retail establishments in the same trade area which establishes the truth of the representation. Tashof must also retain all documents reflecting the manner of conducting the survey and its results for at least 24 months after making the representation. Petitioner (Br. 79-80) objects to this portion of the order, claiming that it improperly shifts the burden of proof to petitioner in any ensuing action for violation of the order,⁹² and that the words "a statistically significant survey" are not sufficiently precise.

required information merely because he anticipates a dispute as to whether he has done so. If petitioner is really concerned about such a situation, he could have his customers execute written acknowledgements that they were so orally advised.

⁹² Petitioner erroneously states (Br. 79-80) that he would be subject to severe "criminal penalties" for violation of the order. To the contrary, violators of Commission orders to cease and desist are subject to civil penalties. Federal Trade Commission Act, Section 5(1), 52 Stat. 111, 15 U.S.C. 45(1).

There is no merit to these objections. Having found that Tashof represented his prices as discount whereas in fact he sold at prices considerably higher than those of his competitors, the Commission would have been justified in prohibiting outright these flagrantly unfair and deceptive representations. Instead, the Commission granted Tashof leeway to make such representations if they should become truthful. And it is not improper to require Tashof to make this showing in the future. As stated in *Colgate-Palmolive Co. v. Federal Trade Commission*, 326 F.2d 517, 523 (1st Cir. 1963), *reversed on other grounds* (Commission's order affirmed *in toto*), 380 U.S. 374, petitioner "has misconceived the principle. The Commission has allowed it an escape, rather than imposed a burden."³³ Cf. *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 476 (1952).

The requirement that Tashof secure the relevant pricing information by means of "a statistically significant survey" of principal retail establishments in his trade area is not vague or imprecise, as alleged by petitioner. The particular words are used in order to preclude petitioner from gathering, and then basing pricing claims upon, some unmeaningful data. As the Commission explained (Op. 45), "This provision does little more than crystallize in order form essentially the same duty that any retailer has—namely, to be able to support any comparative pricing claims he may make. (See Commission

³³ See Commission Opinion, pp. 45-46, where the Commission explained its choice of order in this respect. Here the petitioner's representations that his prices were discount and bargain were flagrantly deceptive; the representations were made without checking competitors' prices, even though petitioner's prices substantially exceeded trade area prices and he employed extremely high markups over cost. The Commission, therefore, concluded that the public interest required that Tashof not make such representations in the future without regard to their truth, and that the petitioner should have evidence of their truth in his files. As the Commission stated (Op. 46), "We do not believe that we ought to risk subjecting the public to future deceptive practices by giving [petitioner] free rein to make any such claims it wants to without *first* having evidence to support them."

Guides Against Deceptive Pricing, Jan. 8, 1964)." 16 CFR 233.1, *et seq.* Petitioner may consult these Guides for guidance as to the type of information required.

Further, Tashof's contentions are comparable to those rejected by this Court in *Giant Food Inc. v. Federal Trade Commission*, 116 App. D.C. 227, 237, 322 F.2d 977, 987 (1963), *cert. dismissed*, 376 U.S. 967 (1967).²⁴ There, Giant objected to a requirement that it cease and desist using the phrase "manufacturer's list price" unless those are the prices at which the goods are "usually and customarily" sold in the trade area. Giant asserted that the words "usual and customary" were indefinite and that there would be difficulties in determining what prices competitors charge. In rejecting the contention, this Court adopted the following statement from *Vanity Fair Paper Mills, Inc. v. Federal Trade Commission*, 311 F.2d 480, 488 (2d Cir. 1962):

The difficulties [petitioner] foresees in determining whether it is complying with the order seem factitious. The order contains the usual provision for the filing of a report of compliance * * * and it is scarcely likely that if [petitioner] proposes a method of compliance which the Commission accepts, and thereafter follows it, the Commission will subsequently and without notice claim a violation entailing the civil penalties of 15 U.S.C. § [45(1)]. If at some future time [petitioner] should desire to change to a procedure different from what it originally proposed, it need not proceed at its peril. The Commission's offices will still be open for discussion * * *.²⁵

²⁴ And see *Heavenly Creations, Inc. v. Federal Trade Commission*, 339 F.2d 7, 9-10 (2d Cir. 1964).

²⁵ *Accord, Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 394 (1965). And see Rule 3.61(c) of the Commission's Rules of Practice, 16 CFR 3.61(c).

CONCLUSION

For the foregoing reasons the Commission's order to cease and desist should be affirmed and enforced in its entirety.⁹⁶

Respectfully submitted.

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September 1969

⁹⁶ "To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission." Federal Trade Commission Act, Sec. 5(c), 52 Stat. 113, 15 U.S.C. 45(c).



APPENDIX

HEARINGS BEFORE A SUBCOMMITTEE OF THE
COMMITTEE ON BANKING AND CURRENCY
UNITED STATES SENATE
EIGHTY-SEVENTH CONGRESS
SECOND SESSION ON S. 1740

* * * *

P. 154

Mr. DIXON. We have responsibility here now, sir, under false and misleading advertising or deception in advertising. I cited the *General Motors* and the *Ford* cases. Here was advertising that moved in commerce. There was no doubt about it moving in commerce.

Senator BENNETT. That is right.

Mr. DIXON. We had responsibility there. We have responsibility in commerce still, sir.

What this law would do would be under the money clause to extend that right on down to the ultimate consumer in commerce, in interstate commerce, and in intrastate commerce.

* * * *

P. 158

Senator DOUGLAS. Did the General Motors Co. or the Ford Co. appeal these decisions from the circuit court?

Mr. DIXON. The certiorari was denied in the *Ford Motor Co.* case, or in both of them. They petitioned for review in the appellate court and they asked for certiorari in the Supreme Court, and it was denied in both instances by the Supreme Court.

So the cease and desist order of the Commission was affirmed by the circuit court, the court of appeals.

* * * *

Senator DOUGLAS. So that this is now the law of the land?

Mr. DIXON. That is correct, sir.

Senator DOUGLAS. What this bill proposes to do is to set up an administrative process under which this principle is to become effective so that it does not have to be asserted by prosecutions by the Government.

Mr. DIXON. That is correct, sir. If someone who was clearly in interstate commerce today would advertise in commerce and it was clear it was in commerce, we would have an obligation to proceed if it was deceptive.

* * * *

HEARINGS
BEFORE THE SUBCOMMITTEE ON CONSUMER
AFFAIRS OF THE COMMITTEE ON
BANKING AND CURRENCY
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS
FIRST SESSION ON H.R. 11601

* * * *

P. 273-74

Mr. DIXON. I am sure you are aware there is quite a bit of difference of a jurisdictional track. One comes out of Commerce—section 5 of the Federal Trade Commission Act—"Unfair Methods of Competition in Commerce"—"An unfair or deceptive act or practice in commerce is hereby declared unlawful"—something to that effect. Now, this means in commerce. So we could only act, strictly speaking, within the domain of "in commerce" clause here.

Mrs. SULLIVAN. You do say in your statement enactment of legislation is necessary in order to carry this out?

Mr. DIXON. This is quite right. One thing about this bill, you are riding the monetary clause and the monetary clause is much broader than the interstate commerce clause. I would say if it is the desire of this committee and the Congress to include this in the bill and leave it in the bill I think it is well that it is left in the bill, and if you assign it to the Commission it will clarify and strengthen our hand of jurisdiction. I think this would be a proper way to approach it, because were it not in the bill, we still are charged with moving against deceptive practices and the failure to put something in advertising has been established as a deceptive practice, but the failure—our problem comes somewhat as to whether or not it is in commerce. Now, clearly, here within the District of Columbia where we have complete responsibility, there is no problem, but as to whether a small vendor in Indianapolis, Ind., sitting in the center

of a State, not in interstate commerce, fails to advertise and disclose everything that he should as to whether or not we have the proper tool now to move down and proceed against him is quite questionable, although I believe we do have the jurisdiction if it should be placed in a newspaper that by happenstance would go across the line, but this opens up a completely new vista for the Federal Trade Commission in responsibility, and I think it would be desirable as you have encompassed it in this bill—if you are going to go in this direction, and I have read Governor Robertson's presentation to the committee, I think he mentioned that he felt the Federal Trade Commission had more expertise and you ought to reconsider if it is going to be done perhaps assigning it there. I think that is true. I think very definitely the Federal Trade Commission has the expertise in the Government establishment in this area.

* * *

P. 277

* * * Under our basic law if we say it is deceptive we must prove deception. You draw this statute and you say it shall be. You see, if it does do that, that is deception under this bill.

* * *

P. 298

Mr. HALPERN. * * *

Mr. Dixon, you mentioned that certain of the advertising provisions in H.R. 11601 might duplicate regulations already in existence under the Federal Trade Commission statute.

I wonder what the nature of the protection is that consumers currently received in view of the many advertisements of credit arrangements that have been cited which may not be false but which, in their choice of items disclosed, are certainly highly misleading?

Mr. DIXON. I wouldn't want to try to make out a case that we have done any great job in this field. I

cited two types of cases that we proceeded against—General Motors and Ford Motor Co. Certainly where we found such transactions taking place in commerce, and we had reason to believe there was deception or something unfair with it, we have a statute that is broad enough to enable us to proceed against such practices. But the problem that this bill is addressed to is far greater than this—it is failure to do certain things.

It is failure to make clear for one reason or another what this bill is addressed to. We had in the *General Motors* case, for instance, what we considered an affirmative misrepresentation, that is, citing 6 percent when it was more than that. If someone just failed to disclose what credit terms were, just didn't recite anything, just said the total price for instance was \$400, then you get into the fringe area of our society where people don't have good credit rating and cannot get credit ratings, maybe for good reasons or bad reasons—sometimes we found that there is no credit terms mentioned, just said you want this television or this radio, it will be \$400 to you.

Now, that is the total cost. What is the price? It might be advertised for, say \$2.50 per week. They do not tell you what the price is or how many weeks or anything.

Now, should they be told?

Certainly, \$2.25 a week is truthful. It is not misrepresenting. The failure there, if there is any deception, is the failure to give enough information.

Now, here in the District of Columbia we have enough jurisdiction I think to do something about some of these types of problems. But when you get across the broad scope of America I think that our problems are a little more difficult.

* * * *

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22702

LEON A. TASHOF

Petitioner

v.

FEDERAL TRADE COMMISSION

Respondent

Petition For Review of an Order of the
Federal Trade Commission

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 9 1969

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PETITIONER'S REPLY TO BRIEF FOR RESPONDENT

Petitioner wishes to point out certain inaccuracies and misstatements contained in the Brief for Respondent. The Commission's Brief contains many more such inaccuracies, but petitioner is making, herein, no attempt to point out all of them. Suffice it to say that the contents of this reply are meant to be illustrative of the errors in the Commission's Brief, and not an exhaustive listing of them.

THE THREE INVOICES AND MR. EPSTEIN'S TESTIMONY CONCERNING THEM

In its Brief, the Commission persists in continuing its reliance upon one of the most flagrantly unfair aspects of this proceeding, the use of the prosecutor's testimony as to the truth of the most significant allegations he was attempting to prove. The Commission, in its Brief states that:

"Further, Mr. Howard Epstein, one of the Commission's Complaint Counsel, testified...Mr. Ullman told him that the handwritten notations on those Exhibits were the retail prices at which NYJC sold the merchandise." (Brief for Respondent, p. 47)

We specifically refer the Court to pages 56 through 60 of petitioner's Brief for fuller discussion of our position in connection with this point. However, it should be abundantly plain, that when Mr. Epstein, who was prosecuting the case for the Commission, was unable to prove his contention in any fashion, he simply took the stand and testified that it was so.

Such a course of proceeding puts petitioner in the unenviable position of watching Complaint Counsel frame the allegations, and when all else fails, testify themselves as to their truth.

Petitioner objected strongly, and continues to object, to a supposed procedure wherein a prosecutor is allowed to take the stand to testify regard-

ing the truth of the charges he is prosecuting. Any reliance on such "evidence", or even the attempt to rely on such evidence, is outrageously unfair and constitutes a blatant disregard for any accepted standard of fairness. The Commission's procedure in having Mr. Epstein testify in support of the allegations of the complaint is simply improper. And nothing that can be said by the Commission can make it proper. The reliance by the Commission upon Mr. Epstein's testimony was unfair and prejudicial, and denied petitioner the benefit of a fair hearing and due process.

Petitioner further points out that Commission orders must be based on reliable, substantial and probative evidence. It is highly unusual that the Commission relied, and continues to rely, upon the penned notations on these three invoices to provide evidence of the prices at which petitioner sold his merchandise, particularly watches. It would have been extremely easy for Complaint Counsel, or for the Commission, to obtain reliable, substantial evidence of the prices at which petitioner sold such watches, or the prices at which petitioner sold any other item of merchandise in his store. The Commission Counsel who investigated the case were in petitioner's store twice. On both occasions they were confronted with a store full of merchandise. All they had need to do, was to physically examine the articles displayed and to note their prices and price tags, or to take photographs, if they desired them for evidence, or to make purchases of the articles, as has been done by the Commission staff routinely in countless previous cases. This was not done, and the Commission has chosen to rely instead on "evidence" that is incompetent in the extreme.

And let petitioner also note that these three invoices were the only three pieces of paper in his files that had any such markings upon them. Complaint Counsel had, and exercised, the opportunity to look at all of re-

spondent's invoices. Complaint Counsel asked for and received copies of hundreds of them (Tr. 395-397), and even Complaint Counsel admitted that these three were the only ones with such markings.

ROLAND TAYLOR'S WATCH

Petitioner turns now to another unusual aspect of this proceeding - the watch belonging to Roland Taylor. This watch and the circumstances surrounding it are fully discussed in petitioner's brief at pages 60 through 68. Complaint Counsel brought to the hearing, and presented into evidence, an old, worn out piece of near junk, and attempted to prove that it had been purchased new from New York Jewelry Company at Christmas time slightly over a year earlier. The fact of the matter, as is fully explained in petitioner's brief, is that the watch which was presented in evidence had never been New York Jewelry's and that Mr. Taylor had obtained it from a pawnbroker. The evidence on the point was, and is, conclusive.

The Commission now takes the position that its flagrantly prejudicial mistake in this connection was of small importance; the Commission, in a still mistaken attempt to rehabilitate this supposed "evidence", now tells us that "still additional evidence that NYJC sold Bulova watches for about seven times cost is the sale of a Bulova watch to one, Roland Taylor for \$295.00." (Brief for Respondent, p. 49) Reference is then made by the Commission to "invoices representing NYJC's receipt of watches from November 1965 to April 1966 show that the most NYJC paid for any Bulova watch during that period was \$39.95". In Footnote 70 on that same page of Respondent's Brief, the Commission assumes that "the invoices, however, do reflect the cost to NYJC of Bulova watches over a representative six month period..." There is no evidence in the record that the period was a representative period. There

is no evidence that the invoices are representative invoices. There is no evidence in the record that these were all of the invoices received from Bulova during that time period. There is no evidence in the record that the watch sold to Roland Taylor was obtained by New York Jewelry from Bulova Watch Company, and there is no evidence that the watch was obtained during the time period covered by the invoices. All of these facts would have to be assumed, before this new argument of the Commission would have any validity. Arguing from such unsupported assumptions certainly does not constitute "reliable, probative and substantial evidence", as is required by Section 7(c) of the Administrative Procedure Act. And no amount of "administrative expertise" on the part of the Commission can remedy the deficiencies.

Nor is the Commission content to let it rest at that. In its Brief, the Commission states further, in Footnote 70 on page 49, that:

"While Mr. Ullman testified that NYJC occasionally re-tailed Bulova watches that wholesale at \$125.00 to \$150.00, he stated that they ordinarily do not stock such a watch and would probably secure it from another jeweler (Tr. 382). The watch sold to Mr. Taylor for \$295.00 was one NYJC already had in stock (Tr. 582-83; CX 9)."

There is no evidence in the record to show the source from which New York Jewelry obtained the watch sold to Roland Taylor, whether from Bulova Watch Company, or from some other jeweler or middleman. The fact that the watch was in New York Jewelry's store prior to Christmas of 1965, at the time that Mr. Taylor walked in, is certainly not evidence that the watch was bought from Bulova; or that the watch was not bought from Bulova. Con-
jecture cannot be allowed to take the place of evidence.^{1/}

1/ We find the same willingness to leap to conclusions in the statement:

"The 'Lord Tash' watch sold for \$89.95 (CX 4, 19). The record includes invoices covering NYJC's purchase of some 160 non-Bulova watches over a representative nine-month period

Petitioner thinks that the most significant thing about this watch is the light which it sheds upon the proceedings employed by the Commission in this case. The watch was obviously, and on its face, not a \$295.00 watch. (See CX 26-A, 26-B, 26-C for large scale photographs of this watch which was actually produced and introduced into evidence.) The Commission's attorneys should have been placed upon their guard by this fact alone. Furthermore, prior to the hearing, petitioner specifically refused to admit the authenticity of this watch, and specifically refused to admit that it had been purchased at New York Jewelry Company. (In contrast, petitioner had willingly admitted, prior to the trial, that the other articles which were to be offered in evidence had been purchased at New York Jewelry Company.) Despite these warning signals that there was something seriously wrong with this supposed "evidence", the Commission chose to proceed and offer the watch in evidence; and the Commission in the decision which is being appealed from herein, chose to rely on this "evidence". (Commission's Opinion, p. 36, Fn. 1.) And once again, in its brief to this Court, the Commission places 1/ (con't.)

(CX 60; RX 12, 13, 16, 17, 18, 19, 20). NYJC paid under \$13 for all but 11 of these watches and the most it paid was \$17.95. It may reasonably be assumed that NYJC's 'Lord Tash' housebrand is reflected by one of these non-Bulova watches. (Emphasis added)

There is no proof that the invoices represent the purchase of a "Lord Tash" watch - only guesswork. There is no evidence that the invoices referred to (CX 60, RX 12, 13, 16, 17, 18, 19, 20) represent all of the non-Bulova watches bought during the period in question; there is no evidence that the invoices or time period were representative. In fact, there is no evidence at all - only speculation, and such speculation does not meet the statutory standing for substantial evidence.

reliance upon the supposed "evidence" supplied by this watch. From start to finish, this proceeding has been conducted in a careless and prejudicial manner. The canons of elementary fairness have been disregarded entirely by the Commission; and assumptions, conjecture and politically expedient socio-economic theories have been allowed to supply the lack of evidence. Petitioner, despite his innocence of the charges brought in the complaint, was judged guilty by the Commission and its staff from the moment when its investigators walked into his place of business.

SOME NOTES ON THE TESTIMONY
ABOUT EYEGLASSES

We find, in the Commission's Brief, a reiteration of Dr. Ephraim's estimate that there were 150 sources for eyeglasses in the City of Washington (Brief for Respondent, p. 24, Fn. 30). The Commission's Brief goes on to reason that there were 85 optometrists, and approximately 65 opticians. The most recent edition of the Metropolitan Washington Classified Telephone Directory shows approximately 145 separate listings under "Opticians" (at pp. 881 through 886 of the Directory). This estimate of the number of listings counts multiple outlet opticians only once, and counts each entity with multiple listings only once. The same issue of the Washington Classified Telephone Directory lists, on pages 886 through 889, approximately 143 listings for individual optometrists. This estimate does not include corporate entries under the "Optometrists" listing, such as Sears Roebuck, Kay Jewelers, The Hecht Company, etc., all of which have optometry departments, presumably with a salaried optometrist in charge. Instead, this estimate includes only individual optometrists listed under their own names as Doctors of Optometry. Petitioner submits that the Classified Directory

for the years 1966 or 1967 would reveal substantially the same state of facts. Dr. Ephraim's estimate is wrong. Presumably as wrong as his testimony about prices. The point is, that in view of the number and diversity of sources for eyeglasses in the City of Washington, Dr. Ephraim's testimony about prevailing prices cannot be credited as substantial evidence thereof.

Another point, alluded to on page 27 of Respondent's Brief, is that "NYJC's gross profit margin on eyeglasses further demonstrates that its prices are not low, discount or economy." There follows a comparison between New York Jewelry's wholesale cost for the components of certain eyeglasses sold by it, and the retail prices for these glasses. The Court cannot be allowed to think that this range of differences is unusual, or that it marks New York Jewelry as being in any way different from other purveyors of eyeglasses in Washington.

There is a paucity of evidence in the record on this point, but what there is points unmistakably to the conclusion that there normally exists an extremely large spread between the wholesale cost of the lenses and frames, and the total price charged to the patient for the finished article. This other evidence comes from Dr. Ephraim. He stated that a frame which had a wholesale cost of \$2.00 would be retailed by him for \$10.00 (Tr. 280). He stated further that a frame that cost \$1.40 would not retail for over \$10.00 (but, presumably, would retail for a price near that) (Tr. 281). He further stated that Roland Taylor's eyeglasses (CX 29) would have a wholesale cost to him of about \$4.00 for the lenses (Tr. 276). He testified that he would make a charge for this pair of glasses (which had a wholesale cost to him of between \$5.75 and \$6.50) of approximately \$32.00, including his examination fee. (See Table 3 to Petitioner's Brief). Presumably Dr. Wendell Whitten, who charged a \$15.00 examination fee, would have charged \$37.00

for the same pair of glasses. (See Table 3)

The important consideration is that a large disparity usually exists between the wholesale cost of the components and the total price of the finished eyeglasses as distributed at retail. This is the pattern in the business, and New York Jewelry's actions in this regard are no different from other sellers of eyeglasses; nor can any significance be attached to this fact in connection with the charges alleged in this complaint.

PETITIONER'S CREDIT DISCLOSURE POLICIES

An example of deliberate attempt at confusion by the Commission in discussing New York Jewelry's credit disclosure practices, can be found in the statements on page 33 of the Brief for Respondent. Let us point out that the Commission's Brief attempts to create the impression that the credit disclosure policies of New York Jewelry prior to the passage of the Truth-in-Lending Act, were hopelessly confusing, and hence deceptive to its customers.

Respondent's Brief, on page 33 thereof, states that:

NYJC maintains a ledger card (as exemplified by CX 70) for each account on which payment notations are made (Tr. 81-82). Stamped on the card is the statement, 'purchase is subject to a carrying charge of 1-1/2% per month on the unpaid balance'. This statement is inconsistent with the provisions of contract forms 'A' and 'B' (see supra 28-30)."

The comment is true. This stamped statement is inconsistent with the provisions of contract forms A and B. The stamped statement was intended to be inconsistent with contract forms A and B, the previously used forms. The ledger card, carrying the stamped statement, was obviously used with, and only with, contract form C. An examination of the ledger card in question (CX 70) will show that the statement has been

rubber stamped in red ink on the ledger card. A brief look at the contracts designated as form "C" will show that they also bear the same rubber stamped statement. A closer examination will reveal that the same rubber stamp was obviously used on both ledger card and the four contracts (CX 47, 48, 60 and 69).

The confusion surrounding this apparent inconsistency, like so much of the confusion on this subject found in the Commission's Brief, resolves itself quite simply, if it is kept in mind that the differing contracts and forms, etc., were used during different time periods. (See pp. 18-24 of petitioner's brief.)

We must also point out that the confusion and disparity regarding the rates of interest charged by respondent, discussed at pages 18 through 23, and in Table B of the Commission's opinion, appears only when the time period during which the balance is outstanding is included in the computation. Obviously, the term of all credit arrangements will not be the same - different purchasers may wish to repay more or less swiftly, and the amounts to be repaid vary from small to large. The interest rate computed according to the formula used in the Commission's opinion (Footnote 1, p. 22, Opinion of the Commission), will vary according to the time of repayment, because the " $2M/(N-1)$ " term of the equation which the Commission uses is a function of the time of repayment. Since this does vary from customer to customer, the annual interest "rate" will also vary, although the interest rate charged by petitioner was constant.

If the differences occasioned by this time function are disregarded, then the credit policies of New York Jewelry Company will be seen to have been consistent, except for the fact that, as noted above, petitioner changed his methods several times in the course of seeking for the best and fairest

way of assessing and disclosing the credit charge.

Further, Table B in the Commission's opinion, states the situation with regard to the disclosure of the interest rates. The Table makes it appear that the annual percentage rate for the contracts on form C (CX 69, CX 47, CX 48, and CX 66) could not be calculated. This is not the case. The credit terms on these contracts are reflected as being 1-1/2% monthly on the unpaid balance of the loan, and one of the authorities cited by the Commission has the following to say about such credit arrangements:

"For personal installment loans with interest calculated monthly on the unpaid balance, the 'true' annual rate of interest is generally regarded as twelve times the monthly rate." (See Board of Governors of the Federal Reserve System, Consumer Installment Credit, Part 1, Vol. I (1957), p. 51.)

THEORY INSTEAD OF EVIDENCE

As an example of the substitution, by the Commission, of socio-economic theory for evidence in the conduct of this case, petitioner points to the following contained on page 42 of the Commission's Brief:

"NYJC is located in a low income market area where the system of merchandising is designed to appeal to low income consumers, i.e. those whose incomes are barely sufficient to fulfill their minimal needs. The customers normally do not qualify for credit in other than this type store; they have often recently emigrated from the South or from rural areas. They suffer a low status of life; are usually immobile economically, educationally, and socially; and normally require personalized service or treatment from the merchants with whom they deal." (Tr. 425, 430, 432-3, 439-40)

The record references are to the testimony of Mr. Joseph Bellenghi. The witness was totally unknowledgeable about petitioner's business. He had never been in petitioner's store, never talked to petitioner's customers, never purchased anything from petitioner and had absolutely no direct firsthand knowledge of petitioner or his activities. Mr. Bellenghi's testimony

is theoretical in its entirety, and has no relationship to the acts or practices alleged to have been committed by New York Jewelry. Petitioner refers the Court to a reading of Mr. Bellenghi's entire testimony (Tr. 423 to 443) in order to appreciate its utter lack of competence in connection with New York Jewelry Company and the acts of which New York Jewelry Company is alleged to be guilty.

THE COMPLAINT CHARGED
PETITIONER WITH SELLING
AT UNCONSCIONABLY HIGH
PRICES

Page 55 of the Commission's Brief states that "the complaint reasonably placed petitioner on notice that his representations as to 'easy credit' were alleged to be false, misleading, deceptive and unfair in the respects ultimately found by the Commission."

This point is discussed at pages 29-33 of Petitioner's Brief. Petitioner claims that the complaint charged that New York Jewelry Company's prices were unconscionably high, in that they greatly exceeded the prices charged by others. The Commission was totally unable to support this allegation. And because of that inability to prove that petitioner charged unconscionably high prices, the Commission's decision altered its emphasis, to decide an allegation that respondent's credit was not "easy".

The paramount issue in this part of the case was whether or not New York Jewelry's prices were 'unconscionably high'. That petitioner's prices were unconscionably high is, in essence, the charge made in Paragraphs Seven and Eight of the complaint. Petitioner was led to believe so. If the key charge was other than that, then petitioner was misled and deceived by the cloudy language of the complaint. And since the Commission, in its

opinion, was forced to disagree with its Hearing Examiner on this point, then it would appear that he was mislead and deceived also. (See page 30 of Petitioner's Brief.)

Petitioner feels that the Court may be interested to learn that Complaint Counsel, who tried this case for the Commission, were also mislead for they stated that the charge against respondent was the selling of merchandise at unconscionably high prices. We refer the Court to pages 430-431 of the Transcript where the following colloquy occurred:

"Mr. Gross (one of the Counsel supporting the complaint):

Yes, Your Honor, I am trying to qualify this witness as an expert on the low income marketplace in Washington, D. C. and on the problems of low income consumers in Washington, D. C. We have charged in Paragraph 2 that New York Jewelry Company does business with low income consumers.

"Hearing Examiner Lynch: Is that illegal?

"Mr. Gross: I beg your pardon?

"Hearing Examiner Lynch: Is that illegal?

"Mr. Gross: That in and of itself is not illegal. We have also charged that the prices charged by the New York Jewelry Company are unconscionable.

I am attempting to show why the prices are unconscionable, and one of the reasons they are unconscionable is because of the class of the people that New York Jewelry does business with."

CONCLUSION

In conclusion, petitioner affirms its claim to the Court that the Commission's Decision and Opinion in this matter have not been based upon substantial evidence, but are based, instead, upon speculation and guesswork, impelled and motivated by the political climate of the times, and that respondent is guilty of no violation of Section 5 of the Federal Trade Commission Act. Petitioner therefore respectfully requests that the Commission's order be set aside.

Respectfully submitted,



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